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2. Subdivision 1. does not apply if any of the following applies:

a. The individual who is consenting to the proposed admission resides with the incapacitated individual.

b. The individual who is consenting to the proposed admission is the spouse of the ward.

54.50
(2)(b)
2.b.

(3) The individual for whom admission is sought is not diagnosed as developmentally disabled or as having a mental illness at the time of the proposed admission.

54.50
(2)(b)
3.

(4) A petition for guardianship for the individual under Sec. ___ and a petition for protective placement of the individual under s. 55.06 (2) are filed prior to the proposed admission. In such cases a guardian ad litem shall be immediately appointed and shall interview the proposed ward not later than 5 calendar days following the date of filing of the petition.

54.50
(2)(b)
4.

(c) The following individuals, in the following order of priority, may consent to an admission under sub. (2):

54.50(2)
(c) (intro.)

(1) The spouse of the incapacitated individual.

54.50(2)(c)
1.

(2) An adult son or daughter of the incapacitated individual.

54.50(2)(c)2.

(3) A parent of the incapacitated individual.

54.50(2)(c)3.

(4) An adult brother or sister of the incapacitated individual.

54.50(2)(c)4.

(5) A grandparent of the incapacitated individual.

54.50(2)(c)5.

(6) An adult grandchild of the incapacitated individual.

54.50(2)(c)6.

(7) An adult close friend of the incapacitated individual.

54.50(2)(c)7.

assessment be conducted for the incapacitated individual under the long-term support community options program under s. 46.27 (6).

CR (h) If the allegedly incapacitated individual, his/her guardian ad litem or any interested person under Sec. _____ [of the guardianship statute] objects to the admission, the Court in which the guardianship petition is pending shall hold a hearing within 10 calendar days of a request by any person on the issue of whether the individual is incapacitated and/or whether the placement shall continue pending the final guardianship hearing.

54.50
(2)(h)

Section Thirteen—Standby Guardianships

RN RA AM (880.36(1)) (1) A petition for the appointment of a standby guardian of the person or estate or both of a minor or person found incompetent under s. 880.08 may be brought at any time.

54.52
(1)

RA AM (880.36(2)) (2) At any hearing conducted under this section the court may designate one or more standby guardians of the person or estate whose appointment shall become effective immediately upon the death, incapacity, or resignation of the initially appointed guardian, or when the initially appointed guardian is unable to fulfill his or her duties, for example, during an extended vacation or illness. The powers and duties of the standby guardian shall be the same as those of the initially appointed guardian. The standby guardian shall receive a copy of the court order establishing or modifying the initial guardianship, and the order designating the standby guardian. Upon assuming office, the standby guardian shall so notify the court.

54.52
(2)

CR (3) A standby guardianship of a minor is not applicable so long as a person has living one natural or adoptive parent who is willing and capable of exercising legal guardianship. Upon the death of the surviving parent, or upon a determination that the parents or surviving parent are incapable of exercising legal guardianship of the person, the standby guardian of the person or estate or both shall automatically assume the duties of guardian, subject only to confirmation by the court within 60 days following assumption of the standby guardian's duties of office.

(Did not
draft
bec. of
48.992)

CR (4) A standby guardianship of a minor becomes inoperative at the age of 18 unless there is a further determination of incompetency at that time.

Section Fourteen—Successor Guardianships

RN CL (880.17) (1) Appointment. When a guardian dies, is removed by order of the court, or resigns and the resignation is accepted by the court, the court, on its own motion or upon petition of any interested person, may appoint a competent and suitable person as successor guardian. The court may, upon request of any interested person or on its own motion, direct that a petition for appointment of a successor guardian be heard in the same manner and subject to the same requirements as provided under this chapter for an original appointment of a guardian.

54.54
(title)

54.54
(1)

(2) Notice. If the appointment under sub. (1) is made without hearing, the successor guardian shall provide notice to the ward and all interested persons of the appointment, the right to counsel and the right to petition for reconsideration of the successor guardian. The notice shall be served personally or by mail not later than 10 days after the appointment.

Subchapter 5—Post-Appointment Matters

Section One—Inventories.

(880.18) First sentence

(1) INVENTORY REQUIRED. When a guardian of the estate has been appointed an inventory shall be made which shall list all of the ward's property and interests in property (including any marital property interests, regardless of how the asset is titled)

(2) CONTENTS OF INVENTORY. The following information shall be provided regarding each asset:

(a) How the asset is held or titled;

(b) The name and relationship of any co-owners;

(c) The marital property classification of property and, for any property which is marital property, which spouse has management and control rights with respect to such property.

(3) TIME FOR FILING. The initial inventory shall be filed within 60 days after appointment of the guardian, unless the court extends or shortens the time.

(4) NOTICE OF INVENTORY. The court shall direct the guardian as to which interested parties shall receive copies of the inventory.

(5) FEE. The fee prescribed in s. 814.66 (1) (b) shall be paid at the time of filing of the inventory. *(Similar to 880.31 (1) but for Guardian, not conservatorship)*

(6) APPRAISAL. An appraisal of all or any part of the ward's estate shall be made when ordered by the court.

(7) VERIFICATION, EXAMINATION IN COURT. Every guardian shall verify by the guardian's oath every inventory required of the guardian and verification shall be to the effect that the inventory is true of all property which belongs to his or her decedent's estate or his or her ward, which has come to the guardian's possession or knowledge, and that upon diligent inquiry the guardian has not been able to discover any property belonging to the estate or ward which is not included therein. The court, at the request of any party interested, or on its own motion, may examine the guardian on oath in relation thereto, or in relation to any supposed omission.

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facsimile transmittal

To: Debora Kennedy

Fax: 264-8522

From: Ann J. Flynn

Date: February 6, 2002

Re:

Pages: 19 including cover page

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

Notes:

Debora: Here are the last pages. I will call Jim Jaeger today and try to get some answers to those questions I mentioned to you.

Best wishes, Ann

Somehow the transmission was
stopped. Here are the rest of the
pages. - Ann
pp. 34 - 41

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CR
RA AM
Section Two—Accounts
54.62 (title)

(1880.25(1)) except for next to last sentence beginning "When any..."
(1) ANNUAL ACCOUNTS REQUIRED. Except as provided in subd. 3, unless waived by the court, every guardian, including corporate guardians, shall, prior to April 15 of each year, file an account under oath specifying the amount of property received and held or invested by the guardian, the nature and manner of the investment, and the guardian's receipts and expenditures during the preceding calendar year. When ordered by the court, the guardian shall within 30 days render and file a like account for any shorter term. In lieu of the filing of these accounts before April 15 of each year, the court may, by appropriate order upon motion of the guardian, direct the guardian of an estate to thereafter render and file the annual accountings within 60 days after the anniversary date of the guardian's qualification as guardian, with the accounting period from the anniversary date of qualification to the ensuing annual anniversary date. The guardian shall also report any change in the status of the surety upon the guardian's bond. At the court's discretion and if determined to be in the ward's best interests, the court may direct the guardian as to which interested parties shall receive copies of the account. 54.62 (1)

RA (1880.25(2))
(2) DISPLAY OF ASSETS. Upon rendering the account the guardian shall produce for examination by the court, or some person satisfactory to the court, all securities, evidences of deposit and investments reported, which shall be described in the account in sufficient detail so that they may be readily identified. It shall be ascertained whether the securities, evidences of deposit and investments correspond with the account. 54.62 (2)

CR (3) SMALL ESTATES. 54.62 (3) (title)

CR a. When the estate of a ward does not exceed \$5,000 in value, no annual accounting is required unless otherwise ordered by the court. 54.62 (3) (a)

CR b. If, after a determination under sub. 1, the ward's estate at any time increases above \$5,000 in value, the guardian is to notify the court, which will determine whether annual and final accountings will be required. Sub A. ? 54.62 (3) (b)

CR c. For purposes of this subsection (3), the estate of the ward shall not include his or her income, burial trusts, or term life insurance or life insurance irrevocably assigned to pay for the disposition of the remains of the ward upon death. 54.62 (3)(c)

CR (4) ANNUAL ACCOUNTS OF MARRIED WARDS. For a married ward, the court in its discretion may waive filing of an annual account or permit the filing of a "Modified Annual Account." The Modified Annual Account shall consist of the following: 54.62 (4) (a) (intro.)

a. Total assets of the ward at the beginning of the year as determined under Ch. 766; 54.62 (4)(a) 1.

b. Income in the name of the ward without regard to the provisions of Ch. 766 and 54.62 (4)(a) 2.

the ward's share of joint income;

c. Expenses incurred on behalf of the ward (including the ward's proportionate share of household expenses if the ward and spouse reside in the same household) without regard to the provisions of Ch. 766.

d. Total assets of the ward at the end of the year as determined under Ch. 766.

e. The account shall be signed by both the guardian and the spouse.

Notice of Waiver of Annual Account or Modified Annual Account shall be given to the adult children of the ward.

RA AM (880.25(4))
(5) EXAMINATION OF ACCOUNTS. The account shall be examined as directed by the court. If it is not satisfactory the court shall make such order thereon as justice requires. Notice to the guardian may be served personally or by certified mail as the court directs. When the examination of a guardian's account is upon notice a guardian ad litem of the ward may be appointed.

RA AM (880.25(5))
(6) NOTICE OF FINAL ACTION ON ACCOUNTS. No action by the court upon any account shall be final unless it is upon notice as the court may direct.

RA AM (880.245)
(7) ACCOUNTING BY THIRD PARTIES TO GUARDIAN. The court, upon the application of any guardian appointed by it may order any person who has been entrusted by the guardian with any part of the estate of a decedent or ward to appear before the court, and may require the person to render a full account, on oath, of any property or papers belonging to the estate which have come to the person's possession and of his or her proceedings thereon. If the person refuses to appear and render an account the court may proceed against him or her as for contempt.

RA Section Three—Review and Termination of Guardianships.

CR; 54.64(1)(title)
RA CL (880.34(1)) First sentence
(1) DURATION. Any guardianship of an individual found to be incompetent under this chapter shall continue during the life of the incompetent, or until terminated by the court.

RA AM (880.34(4)) 1752
CR; 54.64(2)(title)
(2) REVIEW AND MODIFICATION. A ward who is 18 years of age or older, any interested person acting on the ward's behalf, or the ward's guardian may petition for a review of incompetency.

(a) Upon such a petition for review, the court shall:

CR
(1) Appoint a guardian ad litem;

CR (2) Fix a time and place for hearing;

54.64 (2)(a)
2-

CR (3) Designate those persons who are entitled to notice of hearing and how notice shall be given of such hearing;

54.64 (2)
(a) 3-

RA (4) Conduct a hearing at which the ward shall be present and shall have the right to a jury trial, if demanded.

54.64 (2)
(a) 4-

CR (5) The ward shall also have the right to counsel and the court shall appoint counsel if the ward is unable to obtain counsel. If the ward is indigent, counsel shall be provided at the expense of the county having jurisdiction of the guardianship.

54.64 (2)
(b)

RA 880.34 (5) (b). After the hearing provided above, the court may terminate or modify the guardianship.

54.64 (2)(c)

CR (c) Notwithstanding any finding of incompetence, a ward may retain and contract for the payment of reasonable fees to an attorney in connection with proceedings involving review of the terms and conditions of the guardianship, including the question of incompetence, whether or not the ward is successful in such proceeding.

54.64
(2)(b)

RA AM (880.26 (1))

(3) TERMINATION OF GUARDIANSHIP OF THE PERSON. A guardianship of the person shall terminate:

54.64
(3)(intro)

RN (a) When the court adjudicates a former incompetent to be competent.

54.64
(3)(a)

CR (b) When the ward moves out of this state and a guardian is appointed in the state to which the ward has moved.

54.64
(3)(b)

RA AM (880.26 (2))

(4) TERMINATION OF GUARDIANSHIP OF THE ESTATE. A guardianship of the estate shall terminate:

54.64
(4)(intro)

RA (a) When the court adjudicates a former incompetent to be competent.

54.64 (4)(a)

RA (b) When a ward dies (unless the estate can be settled as provided by s. _____).

not drafted

(c) When the ward moves out of this state and a guardian is appointed in the state to which the ward has moved.

54.64 (4)(b)

RA (5) DEPLETED GUARDIANSHIPS. When the court determines that the estate of the ward is

54.64
(5)(intro)

RA (880.26 (3))

below \$5,000 and reduced to a point where it is to the advantage of the ward to dispense with the formalities of guardianship, the court may do one of the following:

RA (a) Terminate the guardianship and authorize disposition of the remaining assets as provided by s. _____. The court, as a part of the disposition, may order the guardian to make appropriate financial arrangements for the burial or other disposition of the remains of the ward. 54.64 (5)(a)

CR (b) Keep the guardianship, but waive bond and accounting. 54.64 (5)(b)

Section Four—Final Accounts.

CR 54.66 (Title)
RA CL (880.27) all but last sentence
(1) RENDER FINAL ACCOUNT. Upon termination of a guardianship, or upon resignation, removal or death of a guardian, such guardian or the guardian's personal representative shall forthwith render the guardian's final account to the court and to the former ward, the successor guardian or the deceased ward's personal representative as the case may be. 54.66 (1)

RA BE (880.27)(3)
(2) SMALL ESTATES. The guardian of a small estate as Sec. ____ shall not be required to file a final account unless otherwise ordered by the court. Instead, the guardian shall simply list the ward's assets remaining at the time the guardianship is terminated (including at the death of the ward). 54.66 (2)

CL (880.27) Last sentence
(3) DISCHARGE. Upon approval of the account and filing proper receipts the guardian shall be discharged and the guardian's bond released. 54.66 (3)

CL (880.28)
(4) SUMMARY SETTLEMENT OF SMALL ESTATES. When a ward dies leaving an estate which can be settled summarily under s. 867.01, the court may approve such settlement and distribution by the guardian, without the necessity of appointing a personal representative. 54.66 (4)

CR Section Five—Review of Conduct of Guardian. 54.68 (Title)

CR (1) CONTINUING JURISDICTION OF COURT. The court which appointed the guardian shall have continuing jurisdiction over the guardian. 54.68 (1)

CR (2) REMEDIES OF COURT. Upon the petition of any party, including the ward, and a finding of cause as set forth in subd. ____ below the Court may, in its discretion, do any of the following: 54.68 (2) (intro)

CR (a). Order the guardian to file an inventory or any other report or account required of the guardian; 54.68 (2)(a)

CR (b). Require the guardian to reimburse the estate of the ward for losses incurred by the guardian's breach of any duty to the ward; 54.68 (2)(b)

(NOTE: § 5(1) → (3) is similar to current 880.192)

CR (c) Impose a financial penalty on the guardian including a denial of compensation requested by the guardian;

54.68(3)

(c)

54.68(3)(d)

CR (d) Remove the guardian; or

CR (e) Enter any other order that may be necessary or appropriate to compel the guardian to act in the best interests of the ward or to otherwise carry out the guardian's duties and enforce such order by civil contempt.

54.68(3)(e)

CR (3) CAUSE FOR COURT ACTION AGAINST THE GUARDIAN.

54.68(2)(intro)

CR (a). Failing to timely file a true, correct and complete required inventory or account;

54.68(2)(a)

CR (b) Committing fraud, waste or mismanagement in connection with the ward's estate;

54.68(2)

(b)

CR (c) Engaging in self-dealing regarding the ward's estate;

54.68(2)(d)

CR (d) Failing to adequately provide for the personal needs of the ward out of the available assets of the ward's estate and available public benefits;

54.68(2)

(e)

CR (e) Failing to exercise due diligence and reasonable care in assuring that the ward's personal needs are being met in the least restrictive environment consistent with the ward's needs and functional capacities;

54.68(2)

(f)

CR (f) Failing to carry out the duties of a guardian as specified in Secs. ____ and ____ of this chapter.

54.68

(2)(i)

CR (4) REMOVAL OF PAID GUARDIANS. The court may remove a corporate or other paid guardian where new circumstances have arisen indicating that a previously unavailable volunteer guardian is now available to serve, and that the change would be in the ward's best interests.

54.68

(4)

CR (5) FEES AND COSTS IN PROCEEDINGS INVOLVING THE GUARDIAN.

54.68(5)

(intro.)

(a) The court may require the guardian to pay personally any costs of proceedings, including costs of service and attorneys fees, or any other penalties the court determines are appropriate.

54.68(5)

(a)

(b) Notwithstanding any finding of incompetence, a ward may retain an attorney and contract for the payment of fees to such attorney in connection with proceedings involving the guardian, whether or not the guardian consents and whether or not the ward is successful in such proceeding.

54.68

(5)(b)

Section Six—Duties of Guardian Ad Litem in Annual Watts Review. In any review of a

54.70

(intro.) -

AM (880.331(5))

protective placement under s. 55.06 or of a protective service order under s. 55.05, the guardian ad litem shall do all of the following:

(1) Interview the ward to explain the review procedure, the right to an independent evaluation, the right to counsel and the right to a hearing.

(2) Provide the information under par. (1) to the ward in writing.

(3) Secure an additional evaluation of the ward, if necessary.

(4) Review the annual report and relevant reports on the ward's condition and placement.

(5) Review the ward's condition, placement and rights with the guardian.

(6) Provide a summary written report to the court.

(7) If relevant, report to the court that the ward objects to the finding of continuing incompetency, the present or proposed placement, the position of the guardian or the recommendation of the guardian ad litem as to the best interests of the ward or if there is ambiguity about the ward's position on these matters.

(8) If relevant, report to the court that the ward requests the appointment of counsel or an adversary hearing.

(9m) Attend the hearing.

Section Seven—Compensation of Guardians of Person and Estate

(1) In General. Guardians of the Person and Guardians of the Estate shall be entitled to compensation and reimbursement for expenses upon the following terms and conditions.

(2) Compensation. Subject to the approval of the court, a guardian shall be entitled to reasonable compensation for the guardian's services. The court shall use the following factors to decide whether guardian compensation is just and reasonable: reasonableness of services; fair market value of services; necessity of services; conflict of interest of the guardian; availability of others to provide the services; amount of ward's estate; need for the services; and hourly rate for the services. The amount of the fees may be determined on an hourly basis or a monthly stipend, or any other basis that the court deems reasonable under the circumstances. The court may, but shall not be required to establish the amount or basis for computing the guardian's fees at the time of initial appointment.

(3) Reimbursement of Expenses. The guardian shall be reimbursement of the amount of the guardian's reasonable expenses incurred in the execution of the guardian's trust including necessary compensation paid to attorneys, accountants, brokers and other agents and servants.

CR ↓ (4) Court Approval. Court approval must be obtained before payment of fees and expenses to the guardian, but need not be obtained before the charges are incurred. 54.72 (3)

RC (880.331(8))
RA Section Eight—Compensation of Guardians ad Litem. On order of the court, the guardian ad litem appointed under this chapter shall be allowed reasonable compensation to be paid by the county of venue, unless the court otherwise directs. If the court orders a county to pay the compensation of the guardian ad litem, the amount ordered may not exceed the compensation paid to private attorneys under s. 977.08 (4m)(b). The guardian ad litem shall be paid for performing all duties required of the guardian ad litem under this chapter and for any other acts approved by the court and reasonably necessary to promote the best interests of the ward. 54.74

Subchapter 6—Voluntary Proceedings: Conservators

AM (880.31) Section One—Appointment of Conservators — RN; title

CONS & RN (1) Any adult resident who believes that he or she is unable properly to manage his or her property or income may voluntarily apply to the circuit court of the county of his or her residence for appointment of a conservator of the estate. Upon receipt of the application the court shall fix a time and place for hearing the application and direct to whom and in what manner notice of the hearing shall be given. 54.76 (1)

RA (2) At the time of such hearing the applicant shall be personally examined and if the court is satisfied that the applicant desires a conservator and that the fiduciary nominated is suitable, the court may appoint the nominee as conservator and issue letters of conservatorship to the nominee upon the filing of a bond in the amount fixed by the court. 54.76 (2)

RA (3) A conservator shall have all the powers and duties of a guardian of the estate of an incompetent person. 54.76 (3)

C; RN; AM (4) Any person whose estate is under conservatorship may apply to the court at any time for termination thereof. Upon such application, the court shall fix a time and place for hearing and direct that 10 days' notice by mail be given to the person's guardian, if any, the conservator and the presumptive heirs of the applicant. Upon such hearing, the court shall, unless it is clearly shown that the applicant is incompetent, remove the conservator and order the property restored to the applicant, or if the applicant so desires and the nominee is suitable, the court may appoint a successor conservator. 54.76 (4)

(5) If the court shall upon such hearing determine that the person whose estate is administered by a conservator may be incapable of handling his or her estate, the court shall order the conservatorship continued, or if the applicant so desires and the nominee is suitable, the court

may appoint a successor conservator.

(6) Appointment of a conservator shall not be evidence of the competency or incompetency of the person whose estate is being administered.

(7) If an application for conservatorship is filed, the fee prescribed in s. 814.66 (1) (b) shall be paid at the time of the filing of the inventory or other documents setting forth the value of the estate.

(8) The conservator's powers shall cease upon being removed by the court for cause or upon appointment of a guardian for, or death of, the person whose estate is being conserved.

54.76
(5)

54.76
(1)

54.76
(6)

Insert p 18

RC (880.24(3)) This same provision is found on p 25.

FEES AND COSTS OF PETITIONER. When a guardian is appointed, the court shall award reasonable costs and attorney fees to the petitioner from the ward's estate and income unless it finds that it would be inequitable to so award costs and fees, after considering: the petitioner's interest in the ward, including any conflict of interest on the part of the petitioner in pursuing the guardianship; whether the ward had executed a power of attorney or engaged in other advance planning to avoid guardianship; the ability of the ward's estate and income to pay; whether the guardianship was contested and, if so, the nature of the contest; and other factors the court deems relevant.

Kennedy, Debora

From: Ann Flynn [aflynn@execpc.com]
Sent: Friday, February 08, 2002 12:01 PM
To: Debora Kennedy
Cc: Betsy Abramson
Subject: Guardianship Project

Dear Debora:

In going over the "1997 draft #2" that I e-mailed to you the other day (so you could see notes by the committee), I noted several things that I thought might interest you. So in the order of FYI here they are:

- ✓ 1. On pp. 5-6 note the comment about the committee's thoughts on s. 880.03, and eliminating the "extraordinary circumstances" provision.
- ✓ 2. On p. 19, see the NOTE about 880.38(3). Apparently the committee definitely wanted to eliminate the s. 55.06(10) report, previously allowed. Add this info. to my faxed material p. 16.
- ? 3. On p. 20 see the NOTE at the top of the page about s. 880.38(1). While the language comes from there, the sense is opposite of current law. Add this to my faxed material p. 16.
- ? 4. On p. 21, I noticed in the (1) [NOTE...] that s. 55.06(3)(c) is referenced in THIS draft for the jurisdiction and venue language. Add this to my faxed material p. 17.
- ✓ 5. On p. 32, at the top of the page, I don't think that I noted in the material I faxed to you that (1) is from s. 880.075. Also, under (2), the reference is to s. 880.32(2)(a), and I may have left the (a) part off. Add this to my faxed material p. 24.
- ✓ 6. On p. 45, Note that 5. is from s. 880.07(4). Add this to my faxed material p. 32.

That's all.

Ann

02/08/2002

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To: Debora Kennedy

Fax: 264-8522

From: Ann J. Flynn

Date: February 11, 2002

Re:

Pages: 15 including cover page

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

Notes:

Debora: Here are my notes on the current statutes. A checkmark means that provision (or in my opinion its equivalent) was included in the proposal. Sometimes, of course, a provision was simply lifted from the statutes (which was easy) but about half the time it was parts of other provisions or just a restatement. An asterisk beside a provision means it was not addressed by the proposal in a way that was apparent to me. You are by now aware of movements to include e.g. stuff about psychotropic meds. Sometimes I put a bracket or parentheses about a sentence or section, then a check or asterisk by it. That means that sentence or section was (or was not) included in the proposal, but the rest of the paragraph was treated differently. Call me if you have any questions. I haven't yet heard from Jim I. about the e-mailed questions I posed to him.

Best wishes, Ann

CONFIDENTIAL

880.01 GUARDIANS AND WARDS

✓ = included in proposal
 * = dropped by proposal

99-00 Wis. Stats. 3344

current 2002

CHAPTER 880

GUARDIANS AND WARDS

SUBCHAPTER I GENERAL PROVISIONS

- 880.01 Definitions.
- 880.02 Jurisdiction in circuit court.
- 880.03 Persons and estates subject to guardianship.
- 880.04 Exceptions.
- 880.05 Venue.
- 880.06 Change of venue.
- 880.07 Petition: fees.
- 880.075 Time of hearing for certain appointments.
- 880.08 Notice of hearing for appointments and rehearings.
- 880.09 Nomination: selection of guardians.
- 880.10 Notice of appointment.
- 880.12 Determination and order appointing guardian.
- 880.125 Sufficiency of bond.
- 880.13 Bond.
- 880.14 When letters to be issued.
- 880.15 Temporary guardian.
- 880.155 Visitation by grandparents and stepparents.
- 880.157 Prohibiting visitation or physical placement if a parent kills other parent.
- 880.16 When a guardian may be removed.
- 880.17 Successor guardian.
- 880.173 Guardian of the estate of a married person.
- 880.175 Petition for placement of assets in trust.
- 880.18 Inventory.
- 880.19 Management of ward's estate.
- 880.191 Inventories, accounts.
- 880.192 Fraud, waste, mismanagement.
- 880.195 Transfer of Menominee guardianship funds to trust.
- 880.21 Use of estate for benefit of wards.
- 880.215 Lis pendens: void contracts.
- 880.22 Claims.
- 880.23 Actions.
- 880.24 Compensation allowed from estate.
- 880.245 Accounting by agent.
- 880.25 Accounting.
- 880.251 Removal of guardian.
- 880.252 Accounts: failure of guardian to file.
- 880.253 Formal accounting by guardians.
- 880.26 Termination of guardianship.
- 880.27 Settlement of accounts.
- 880.28 Summary settlement of small estates.
- 880.29 Delivery of property to foreign guardian.
- 880.295 Guardian for mentally ill patient or conservator for county hospital patient or county home resident.
- 880.31 Voluntary proceedings: conservators.
- 880.32 Notes and mortgages of minor veterans.
- 880.33 Incompetency: appointment of guardian.
- 880.331 Guardian ad litem in incompetency cases.
- 880.34 Duration of guardianship: review.
- 880.35 Nonprofit corporation as guardian.
- 880.36 Standby guardianship.
- 880.37 Application for limited guardianship of property.
- 880.38 Guardian of the person of incompetent.
- 880.39 Guardianship of person: exemption from civil liability.

SUBCHAPTER II

UNIFORM VETERANS' GUARDIANSHIP ACT

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Cross-reference: See definitions in ch. 851.

SUBCHAPTER I

GENERAL PROVISIONS

✓ **880.01 Definitions.** For the purpose of this chapter, unless the context otherwise requires:

✓ (1) "Agency" means any public or private board, corporation or association which is concerned with the specific needs and problems of mentally retarded, developmentally disabled, men-

tally ill, alcoholic, drug dependent and aging persons, including a county department under s. 51.42 or 51.437.

✓ (2) "Developmentally disabled person" means any individual having a disability attributable to mental retardation, cerebral palsy, epilepsy, autism or another neurological condition closely related to mental retardation or requiring treatment similar to that required for mentally retarded individuals, which has continued or can be expected to continue indefinitely, substantially impairs the individual from adequately providing for his or her own care or custody and constitutes a substantial handicap to the afflicted individual. The term does not include a person affected by senility which is primarily caused by the process of aging or the infirmities of aging.

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✓ (3) "Guardian" means one appointed by a court to have care, custody and control of the person of a minor or an incompetent or the management of the estate of a minor or an incompetent or a spendthrift.

✓ (4) "Incompetent" means a person adjudged by a court of record to be substantially incapable of managing his or her property or caring for himself or herself by reason of infirmities of aging, developmental disabilities, or other like incapacities. Physical disability without mental incapacity is not sufficient to establish incompetence.

* (5) "Infirmities of aging" means organic brain damage caused by advanced age or other physical degeneration in connection therewith to the extent that the person so afflicted is substantially impaired in his or her ability to adequately provide for his or her own care or custody.

✓ (6) "Interested person" means any adult relative or friend of a person to be protected under this subchapter; or any official or representative of a public or private agency, corporation or association concerned with the welfare of the person who is to be protected.

✓ (7) "Minor" means a person who has not attained the age of 18 years.

* (7m) "Not competent to refuse psychotropic medication" means that, because of chronic mental illness, as defined in s. 51.01 (3g), and after the advantages and disadvantages of and alternatives to accepting the particular psychotropic medication have been explained to an individual, one of the following is true:

(a) The individual is incapable of expressing an understanding of the advantages and disadvantages of accepting treatment and the alternatives.

(b) The individual is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his or her chronic mental illness in order to make an informed choice as to whether to accept or refuse psychotropic medication.

* (8) "Other like incapacities" means those conditions incurred at any age which are the result of accident, organic brain damage, mental or physical disability, continued consumption or absorption of substances, producing a condition which substantially impairs an individual from providing for the individual's own care or custody.

* (9) "Spendthrift" means a person who because of the use of intoxicants or drugs or of gambling, idleness or debauchery or other wasteful course of conduct is unable to attend to business or thereby is likely to affect the health, life or property of the person or others so as to endanger the support of the person and the person's dependents or expose the public to such support.

✓ (10) "Ward" means a subject for whom a guardian has been appointed.

History: 1971 c. 41 s. 8; 1971 c. 228 s. 36; Stats. 1971 s. 880.01; 1973 c. 284; 1975 c. 430; 1981 c. 379; 1985 a. 29 s. 3200 (56); 1985 a. 176; 1987 a. 366; 1993 a. 486; 1995 a. 268.

Guardianships and Protective Placements. Viney. Wis. Law. Aug. 1991.

✓ **880.02 Jurisdiction in circuit court.** The circuit court shall have jurisdiction over all petitions for guardianship. A guardianship of the estate of any person, once granted, shall extend to all of his or her estate in this state and shall exclude the jurisdiction of every other circuit court, except as provided in ch. 786.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.02; 1979 c. 449; 1979 c. 32 s. 92 (14).

✓ **880.03 Persons and estates subject to guardianship.** All minors, incompetents and spendthrifts are subject to guardianship. The court may appoint a guardian of the person of anyone subject to guardianship who is also a resident of the county, or of a nonresident found in the county, under extraordinary circumstances requiring medical aid or the prevention of harm to his or her person or property found in the county. The court may appoint a guardian of the estate of anyone subject to guardianship, whether a resident of the state or not, if any of the estate is located within

the county. Separate guardians of the person and of the estate of a ward may be appointed.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.03; 1993 a. 486.

✓ **880.04 Exceptions. (1) EMANCIPATION OF MARRIED MINORS.** Except for minors found to be incompetent, upon marriage, a minor shall no longer be a proper subject for guardianship of the person and a guardianship of the person is revoked by the marriage of a minor ward. Upon application, the court may release in whole or in part the estate of a minor ward to the ward upon the ward's marriage. Upon marriage, the guardianship of an incompetent is subject to review under s. 880.34.

✓ (2) **SMALL ESTATES.** If a minor or an incompetent, except for his or her incapacity, is entitled to possession of personal property of a value of \$10,000 or less, any court wherein an action or proceeding involving said property is pending may, in its discretion, without requiring the appointment of a guardian, order one of the following:

✓ (a) Deposit in a savings account in a bank, the payment of whose accounts in cash immediately upon default of the bank are insured by the federal deposit insurance corporation; deposit in a savings account in a savings bank or a savings and loan association that has its deposits insured by the federal deposit insurance corporation; deposit in a savings account in a credit union having its deposits guaranteed by the Wisconsin credit union savings insurance corporation or by the national board, as defined in s. 186.01 (3m); or invest in interest-bearing obligations of the United States. The fee for the clerk's services in depositing and disbursing the funds under this paragraph is prescribed in s. 814.61 (12) (a).

✓ (b) Payment to the natural guardian of the minor or to the person having actual custody of the minor.

✓ (c) Payment to the minor.

✓ (d) Payment to the person having actual or legal custody of the incompetent or to the person providing for the incompetent's care and maintenance for the benefit of the incompetent.

✓ (2m) **INFORMAL ADMINISTRATION.** If a minor or an incompetent, except for his or her incapacity, is entitled to possession of personal property of a value of \$5,000 or less from an estate administered through informal administration under ch. 865, the personal representative may, without the appointment of a guardian, do any of the following:

✓ (a) With the approval of the register in probate, take one of the actions under sub. (2) (a).

✓ (b) With the approval of the guardian ad litem of the minor or incompetent, take one of the actions under sub. (2) (a) and file proof of the action taken and of the approval of the guardian ad litem with the probate registrar instead of filing a receipt under s. 865.21.

✓ (3) **UNIFORM GIFTS AND TRANSFERS TO MINORS.** If a minor, except for his or her incapacity, is entitled to possession of personal property of any value, any court wherein an action or proceeding involving the property is pending may, without requiring the appointment of a guardian, order payment to a custodian for the minor designated by the court under ss. 880.61 to 880.72 or under the uniform gifts to minors act or uniform transfers to minors act of any other state.

History: 1971 c. 41; 1973 c. 284; 1977 c. 50; 1981 c. 317; 1983 a. 369; 1985 a. 29, 142; 1987 a. 191; 1989 a. 138; 1991 a. 221; 1993 a. 486.

✓ **880.05 Venue.** All petitions for guardianship of residents of the state shall be directed to the circuit court of the county of residence of the person subject to guardianship or of the county in which the person is physically present. A petition for guardianship of the person or estate of a nonresident may be directed to the circuit court of any county where the person or any property of the nonresident may be found.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.05; 1975 c. 393, 421; 1977 c. 449 s. 497; 1987 a. 27.

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✓ **880.06 Change of venue.** (1) ORIGINAL PROCEEDING. The court wherein a petition is first filed shall determine venue. If it is determined that venue lies in another county, the court shall order the entire record certified to the proper court. A court wherein a subsequent petition is filed shall, upon being satisfied of an earlier filing in another court, summarily dismiss such petition.

✓ (2) CHANGE OF RESIDENCE OF WARD OR GUARDIAN. If a guardian removes from the county where appointed to another county within the state or a ward removes from the county in which he or she has resided to another county within the state, the circuit court for the county in which the ward resides may appoint a new guardian as provided by law for the appointment of a guardian. Upon verified petition of the new guardian, accompanied by a certified copy of appointment and bond if the appointment is in another county, and upon the notice prescribed by s. 879.05 to the originally appointed guardian, unless he or she is the same person, and to any other persons that the court shall order, the court of original appointment may order the guardianship accounts settled and the property delivered to the new guardian.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.06; 1977 c. 449; 1999 s. 85.

✓ **880.07 Petition; fees.** (1) Any relative, public official or other person, may petition for the appointment of a guardian of a person subject to guardianship. Such petition shall state, so far as may be known:

✓ (a) The name, date of birth, residence and post-office address of the proposed ward.

✓ (b) The nature of the proposed ward's incapacity with specification of the incompetency or spendthrift habits.

✓ (c) The approximate value of the proposed ward's property and a general description of its nature.

✓ (d) Any assets previously derived from or benefits now due and payable from the U.S. department of veterans affairs.

✓ (e) Any other claim, income, compensation, pension, insurance or allowance to which the proposed ward may be entitled.

✓ (f) Whether the proposed ward has any guardian presently.

✓ (g) The name and post-office address of any person nominated as guardian by the petitioner.

✓ (h) The names and post-office addresses of the spouse and presumptive or apparent adult heirs of the proposed ward, and all other persons believed by the petitioner to be interested.

✓ (i) The name and post-office address of the person or institution having the care and custody of the proposed ward.

✓ (j) The interest of the petitioner, and if a public official or creditor is the petitioner, then the fact of indebtedness or continuing liability for maintenance or continuing breach of the public peace as well as the authority of the petitioner to act.

* (1m) If the petition under sub. (1) alleges that the person is not competent to refuse psychotropic medication, the petition shall allege all of the following:

(a) That the person is likely to respond positively to psychotropic medication.

(b) That as a result of the person's failure to take medication the person is unable to provide for his or her care in the community. The person's past history is relevant to determining his or her current inability to provide for his or her care in the community under this paragraph.

(c) That unless protective services, including psychotropic medication, are provided the person will incur a substantial probability of physical harm, impairment, injury or debilitation or will present a substantial probability of physical harm to others.

(cm) That the substantial probability of physical harm, impairment, injury or debilitation is evidenced by the person's history of at least 2 episodes, one of which has occurred within the previous 24 months, that indicate a pattern of overt activity, attempts, threats to act or omissions that resulted from the person's failure to participate in treatment, including psychotropic medication,

and that resulted in a finding of probable cause for commitment under s. 51.20 (7), a settlement agreement approved by a court under s. 51.20 (8) (bg) or commitment ordered under s. 51.20 (13).

(d) That the person has attained the age of 18 years.

✓ (2) A petition for guardianship may also include an application for protective placement or protective services or both under ch. 55.

✓ (3) In accordance with s. 6.03 (3), any elector of a municipality may petition the circuit court for a determination that a person residing in such municipality is incapable of understanding the objective of the elective process and thereby ineligible to register to vote or to vote in an election. This determination shall be made by the court in accordance with the procedures set forth in ss. 880.08 (1) and 880.33 for determining limited incompetency. When a petition is filed under this subsection, the finding of the court shall be limited to a determination as to voting eligibility. The appointment of a guardian or limited guardian is not required for a person whose sole limitation is ineligibility to vote.

✓ (4) If a petition for guardianship of the estate is filed, the fee prescribed in s. 814.66 (1) (b) shall be paid at the time of filing of the inventory or other documents setting forth the value of the estate.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.07; 1973 c. 284; 1977 c. 394; 1979 c. 32, 110, 355; 1981 c. 317; 1987 s. 366; 1989 s. 56; 1993 s. 316, 486.

Failure of a petitioner for a guardianship to name persons who obviously had an interest does not cancel the jurisdiction of the court, and where the persons had actual knowledge of the hearing and contested it, the court could appoint a guardian. Guardianship of Marak, 59 Wis. 2d 159, 207 N.W.2d 648.

A guardian has general authority to consent to medication for a ward, but may consent to psychotropic medication only in accordance with ss. 880.07 (1m) and 880.33 (4m) and (4p). The guardian's authority to consent to medication or medical treatment of any kind is not affected by an order for protective placement or services. OAG 5-99.

✓ **880.075 Time of hearing for certain appointments.** A petition for guardianship of a person who has been admitted to a nursing home or a community-based residential facility under s. 50.06 shall be heard within 60 days after it is filed. If an individual under s. 50.06 (3) alleges that an individual is making a health care decision under s. 50.06 (5) (a) that is not in the best interests of the incapacitated individual or if the incapacitated individual verbally objects to or otherwise actively protests the admission, the petition shall be heard as soon as possible within the 60-day period.

History: 1993 s. 187.

✓ **880.08 Notice of hearing for appointments and rehearings.** Upon the filing of a petition for guardianship, and the court being satisfied as to compliance with s. 880.07, the court shall order notice of the time and place of hearing as follows:

✓ (1) INCOMPETENTS. A petitioner shall have notice served of a petition for appointment or change of a guardian upon the proposed incompetent and existing guardian, if any, by personal service at least 10 days before the time set for hearing. If such proposed incompetent is in custody or confinement, a petitioner shall have notice served by registered or certified mail on the proposed incompetent's custodian, who shall immediately serve it on the proposed incompetent. The custodian shall inform the proposed incompetent of the complete contents of the notice and certify thereon that the custodian served and informed the proposed incompetent and returned the certificate and notice to the circuit judge. The notice shall include the names of all persons who are petitioning for guardianship. A copy of the petition shall be attached to the notice. The court shall cause the proposed incompetent, if able to attend, to be produced at the hearing. The proposed incompetent is presumed able to attend unless, after a personal interview, the guardian ad litem certifies in writing to the court the specific reasons why the person is unable to attend. If the person is unable to attend a hearing because of physical inaccessibility or lack of transportation, the court shall hold the hearing in a place where the person may attend if requested by the proposed ward, guardian ad litem, adversary counsel or other interested person. Such notice shall also be given personally or by mail at least 10 days before the hearing to the proposed incompe-

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tent's counsel, if any, guardian ad litem, presumptive adult heirs or other persons who have legal or physical custody of the proposed incompetent whose names and addresses are known to the petitioner or can with reasonable diligence be ascertained, to any governmental or private agency, charity or foundation from which the proposed incompetent is receiving aid and to such other persons or entities as the court may require. The court shall then proceed under s. 880.33.

(2) **SPENDTHRIFTS.** Notice shall be served personally upon the proposed spendthrift ward at least 10 days before the time set for hearing but the proposed ward may appear without objecting to the jurisdiction of the court over the proposed ward's person and thereupon the matter may be heard forthwith.

(3) **MINORS.** (am) When the proposed ward is a minor, notice shall be given as provided in s. 879.05 to all of the following persons, if applicable:

1. The proposed ward's spouse.
2. The proposed ward's parents.
3. A minor proposed ward over 14 years of age unless the minor appears at the hearing.
4. Any other person, agency, institution, welfare department or other entity having the legal or actual custody of the minor.

(e) No notice under par. (am) need be given to parents whose rights have been judicially terminated.

(4) **REHEARINGS.** Notice of a rehearing to determine if a ward is a proper subject to continue under guardianship shall be given as required for the appointment of a guardian.

History: 1971 c. 41 s. 8, 12; Stats. 1971 s. 880.08; 1973 c. 284; Sup. Ct. Order, 67 Wis. 2d 585, 768 (1975); 1975 c. 218, 393, 421; 1977 c. 449 s. 497; 1981 c. 379; 1989 a. 141; 1993 a. 486; 1999 a. 85.

880.09 Nomination; selection of guardians. The court shall consider nominations made by any interested person and, in its discretion, shall appoint a proper guardian, having due regard for the following:

(1) **NOMINATION BY MINOR.** A minor over 14 years may in writing in circuit court nominate his or her own guardian, but if the minor is in the armed service, is without the state, or if other good reason exists, the court may dispense with the right of nomination.

(2) **PREFERENCE.** If one or both of the parents of a minor, a developmentally disabled person or a person with other like incapacity are suitable and willing, the court shall appoint one or both of them as guardian unless the proposed ward objects. The court shall appoint a corporate guardian under s. 880.35 only if no suitable individual guardian is available.

(3) **EFFECT OF NOMINATION BY MINOR.** If neither parent is suitable and willing, the court may appoint the nominee of a minor.

(4) **GUARDIAN OF THE PERSON NOMINATED BY WILL.** Subject to the rights of a surviving parent, a parent may by will nominate a guardian of the person of his or her minor child.

(5) **GUARDIAN OF THE ESTATE NOMINATED BY WILL.** A parent may by will nominate a guardian of the estate of the parent's minor child and may waive the requirement of a bond as to such estate derived through the will.

(6) **TESTAMENTARY GUARDIANSHIP OF CERTAIN PERSONS.** Subject to the rights of a surviving parent, a parent may by will nominate a guardian and successor guardian of the person or estate of any of his or her minor children who are in need of guardianship. For a person over the age of 18 found to be in need of guardianship under s. 880.33 by reason of a developmental disability or other like incapacity, a parent may by will nominate a testamentary guardian.

(7) **ANTICIPATORY NOMINATION; PREFERENCE.** Any person other than a minor may, at such time as the person has sufficient capacity to form an intelligent preference, execute a written instrument, in the same manner as the execution of a will under s. 853.03, nominating a person to be appointed as guardian of his or her person or property or both in the event that a guardian is in the future appointed. Such nominee shall be appointed as guardian by the

court unless the court finds that the appointment of such nominee is not in the best interests of the person for whom, or for whose property, the guardian is to be appointed.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.09; 1973 c. 284; 1975 c. 393; 1977 c. 449; 1993 a. 486.

The nomination by a parent unfit to be his children's guardian should be weighed by the court. In re Guardianship of Schmidt, 71 Wis. 2d 317, 237 N.W.2d 919.

880.10 Notice of appointment. If for any reason the court fails to appoint as guardian the nominee of the minor, the guardian who qualifies shall give notice of the guardian's appointment to the minor by certified mail addressed to the minor's last-known post-office address and an affidavit of such mailing shall be filed with the court within 10 days after the issuance of letters.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.10; 1993 a. 486.

880.12 Determination and order appointing guardian.

(1) The court shall after hearing determine whether the person is a proper subject for guardianship. If the person is found to be in need of a guardian, the court shall appoint one or more guardians but not more than one guardian of the person shall be appointed unless they be husband and wife. The order shall specify the amount of the bond, if any, to be given.

(2) In appointing a guardian for a person who has been admitted to a nursing home or a community-based residential facility under s. 50.06, the court shall make a finding as to whether the person's incompetence is potentially reversible.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.12; 1993 a. 187.

880.125 Sufficiency of bond. In any action or proceeding wherein funds are to be paid to a guardian, the trial court or court approving disbursement of such funds shall, prior to payment or approval, be satisfied as to the sufficiency of the penal sum of the guardian's bond.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.125.

880.13 Bond. (1) **FORM OF BOND.** Upon the appointment of a guardian of the estate of a ward, except as provided under s. 880.60 (9), the court may require a bond given in accordance with ch. 878 and s. 895.345, conditioned upon the faithful performance of the duties of the guardian.

(2) **WAIVER OF BOND.** (a) Unless required under s. 880.60 (9), the court may waive the requirement of a bond at any time in its discretion or if so requested in a will wherein a nomination appears.

(b) Whenever a guardian has or will have possession of funds with a total value of \$40,000 or less, the court may direct deposit of the funds in an insured account of a bank, credit union, savings bank or savings and loan association in the name of the guardian and the ward and payable only upon further order of the court. In such event the court may waive the requirement of a bond.

(3) **BLANKET BOND FOR EMPLOYEE GUARDIAN OR CONSERVATOR.** The circuit court may designate one or more persons who are county institutional employees, whose duty it is to act as guardian of one or more estates of incompetent persons upon appointment by the court, or as conservator for the estates of persons making application therefor, who are residents of the county home, patients of the county hospitals or county mental hospitals. The appointments shall be made subject to this chapter. The person, before entering upon duties, shall take an official oath. The court may waive the requirement of a bond or may require the person to give bond, with sufficient sureties, to the judge of the court, in a sum not less than \$1,000 subject to court approval. The bond shall cover the person so designated and appointed in all guardianships and conservatorships to which the person has been or shall be appointed by the court. Additional bonds may be required from time to time. The expense of surety upon the bonds shall be paid by the county treasurer on the order of the circuit judge. The term of the person appointed shall terminate upon resignation or removal and approval of the person's accounts by the court.

History: 1971 c. 35; 1971 c. 41 s. 8; 1971 c. 211 s. 114; Stats. 1971 s. 880.13; 1973 c. 284 s. 32; 1973 c. 336 s. 79; 1977 c. 74, 449; 1983 a. 369; 1991 a. 221.

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✓ **880.14 When letters to be issued.** When a guardian has given bond as required and the bond has been approved by the judge, letters under the seal of the court shall be issued to the guardian.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.14; 1993 a. 486.

✓ **880.15 Temporary guardian.** (1) **APPOINTMENT.** If, after consideration of a petition for temporary guardianship, the court finds that the welfare of a minor, spendthrift or an alleged incompetent requires the immediate appointment of a guardian of the person or of the estate, or of both, it may appoint a temporary guardian for a period not to exceed 60 days unless further extended for 60 days by order of the court. The court may extend the period only once. The authority of the temporary guardian shall be limited to the performance of duties respecting specific property, or to the performance of particular acts, as stated in the order of appointment. All provisions of the statutes concerning the powers and duties of guardians shall apply to temporary guardians except as limited by the order of appointment. The temporary guardian shall make the reports the court directs and shall account to the court upon termination of authority. The court assigned to exercise jurisdiction under chs. 48 and 938 has exclusive jurisdiction over the appointment of a temporary guardian of a minor for medical purposes but shall proceed in accordance with this section. *Spouse may be covered under 89(2)*

* (1m) **ADOPTION BY TEMPORARY GUARDIAN.** No person appointed temporary guardian of a child under this section may adopt the child without complying with the adoption procedures of ch. 48.

✓ (1s) **NOTICE OF PETITION.** The person petitioning for appointment of a temporary guardian shall cause notice to be given under s. 880.08 of that petition to the minor, spendthrift or alleged incompetent and, if the appointment is made, shall give notice of the appointment to the ward. The time limits of s. 880.08 do not apply to notice given under this subsection. The notice shall be served before or at the time the petition is filed or as soon thereafter as possible and shall include notice of the right to counsel and of the right to petition for reconsideration or modification of the temporary guardianship under s. 880.34 within 30 days of receipt of the notice.

* (2) **BOND OF TEMPORARY GUARDIAN.** Every temporary guardian appointed under sub. (1) shall before entering upon the duties of his or her trust give bond to the judge of the circuit court in such sum and with such sureties the court designates and approves.

* (3) **CESSATION OF POWERS.** If the temporary guardianship is not sooner terminated the duties and powers of the temporary guardian shall cease upon the issuing of letters of permanent guardianship to the guardian of the ward, or if the ward is a minor, upon his becoming of age, or when it is judicially determined that any other disability of the temporary ward which was the cause of the temporary guardianship has terminated. Upon termination of the temporary guardian's duties and powers, a temporary guardian of the person shall file with the court any report that the court requires. A temporary guardian of the estate shall, upon termination of duties and powers, account to the court and deliver to the person or persons entitled to them all the estate of the ward in his or her hands. Any action which has been commenced by the temporary guardian may be prosecuted to final judgment by the successor or successors in interest, if any.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.15; 1977 c. 354, 418, 449; 1979 c. 175; 1981 c. 379; 1995 a. 77.

* **880.155 Visitation by grandparents and stepparents.** (1) In this section, "stepparent" means the surviving spouse of a deceased parent of a minor child, whether or not the surviving spouse has remarried.

(2) If one or both parents of a minor child are deceased and the child is in the custody of the surviving parent or any other person, a grandparent or stepparent of the child may petition for visitation privileges with respect to the child, whether or not the person with

custody is married. The grandparent or stepparent may file the petition in a guardianship or temporary guardianship proceeding under this chapter that affects the minor child or may file the petition to commence an independent action under this chapter. Except as provided in sub. (3m), the court may grant reasonable visitation privileges to the grandparent or stepparent if the surviving parent or other person who has custody of the child has notice of the hearing and if the court determines that visitation is in the best interest of the child.

* (3) Whenever possible, in making a determination under sub. (2), the court shall consider the wishes of the child.

* (3m) (a) Except as provided in par. (b), the court may not grant visitation privileges to a grandparent or stepparent under this section if the grandparent or stepparent has been convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of a parent of the child, and the conviction has not been reversed, set aside or vacated.

* (b) Paragraph (a) does not apply if the court determines by clear and convincing evidence that the visitation would be in the best interests of the child. The court shall consider the wishes of the child in making the determination.

* (4) The court may issue any necessary order to enforce a visitation order that is granted under this section, and may from time to time modify such visitation privileges or enforcement order upon a showing of good cause.

* (4m) (a) If a grandparent or stepparent granted visitation privileges with respect to a child under this section is convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of a parent of the child, and the conviction has not been reversed, set aside or vacated, the court shall modify the visitation order by denying visitation with the child upon petition, motion or order to show cause by a person having custody of the child, or upon the court's own motion, and upon notice to the grandparent or stepparent granted visitation privileges.

* (b) Paragraph (a) does not apply if the court determines by clear and convincing evidence that the visitation would be in the best interests of the child. The court shall consider the wishes of the child in making the determination.

* (5) This section applies to every minor child in this state whose parent or parents are deceased, regardless of the date of death of the parent or parents.

History: 1975 c. 122; 1995 a. 38; 1999 a. 9.

The adoption of a child of a deceased parent does not terminate the decedent's parents' grandparental visitation rights under s. 880.155. Grandparental Visitation of C.G.F. 168 Wis. 2d 62, N.W.2d 803 (1992).

Section 767.245 (5) sets an appropriate standard for determining the best interests of a child under this section. The court did not exceed its authority under this section or violate a parent's constitutional rights to raise a child by ordering grandparent visitation, nor did it violate this section by ordering a guardian ad litem, mediation, and psychological evaluations. The court was not authorized by this section to order psychotherapeutic treatment that was arguably in the child's best interests, but outside the scope of visitation. F.R. v. T.B., 225 Wis. 2d 628, 593 N.W.2d 840 (Ct. App. 1999).

Grandparent Visitation Rights. Rothstein. Wis. Law. Nov. 1992.

The Effect of C.G.F. and Section 48.925 on Grandparental Visitation Petitions. Hughes. Wis. Law. Nov. 1992.

* **880.157 Prohibiting visitation or physical placement if a parent kills other parent.** (1) Except as provided in sub. (2), in an action under this chapter that affects a minor child, a court may not grant to a parent of the child visitation or physical placement rights with the child if the parent has been convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of the child's other parent, and the conviction has not been reversed, set aside or vacated.

* (2) Subsection (1) does not apply if the court determines by clear and convincing evidence that visitation or periods of physical placement would be in the best interests of the child. The court shall consider the wishes of the child in making the determination.

History: 1999 a. 9.

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880.16 When a guardian may be removed. (1) **NOMINATION BY MINOR.** When a minor ward has attained the age of 14 years a guardian of the minor ward's person, upon notice as required by the court, may be removed on petition of the ward for the purpose of having another person appointed guardian if it is for the best interest of the ward.

(2) **REMOVAL FOR CAUSE.** When any guardian fails or neglects to discharge the guardian's trust the court may remove the guardian after such notice as the court shall direct to such guardian and all others interested.

(3) **CITATION TO GUARDIAN.** (a) A citation to a guardian to appear in circuit court may be served in the manner provided for substituted service for summons in the court if the guardian has absconded or keeps himself or herself concealed so as to avoid personal service or if the guardian is a nonresident of this state or has absented himself or herself therefrom for a period of one year.

(b) Upon filing proof of service and at the time fixed in the citation such court shall consider such matter and take proof and grant such relief as shall be just; and any order or judgment made in said proceedings shall be binding upon such guardian and shall be prima facie evidence of all facts therein recited.

(4) **FRAUD AS TO WARD'S ESTATE.** Upon complaint made to the circuit court by any guardian or ward, or by any creditor or other person interested in the estate, or by any person having any prospective interest therein, as heir or otherwise, against any person suspected of having concealed, stolen or conveyed away any of the money, goods, effects or instruments in writing belonging to the ward the court may cite and examine each suspected person and proceed with the person as to such charge in the same manner as is provided with respect to persons suspected of concealing or stealing the effects of a deceased person in s. 879.61.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.16; 1977 c. 449 ss. 458, 497; 1993 a. 486.

880.17 Successor guardian. (1) **APPOINTMENT.** When a guardian dies, is removed by order of the court, or resigns and the resignation is accepted by the court, the court, on its own motion or upon petition of any interested person, may appoint a competent and suitable person as successor guardian. The court may, upon request of any interested person or on its own motion, direct that a petition for appointment of a successor guardian be heard in the same manner and subject to the same requirements as provided under this chapter for an original appointment of a guardian.

(2) **NOTICE.** If the appointment under sub. (1) is made without hearing, the successor guardian shall provide notice to the ward and all interested persons of the appointment, the right to counsel and the right to petition for reconsideration of the successor guardian. The notice shall be served personally or by mail not later than 10 days after the appointment.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.17; 1993 a. 486; 1995 a. 73.

880.173 Guardian of the estate of a married person. (1) A guardian of the estate appointed under this chapter for a married person may exercise with the approval of the court, except as limited under s. 880.37, any management and control right over the marital property or property other than marital property and any right in the business affairs which the married person could exercise under ch. 766 if the person were not determined under s. 880.12 to be a proper subject for guardianship. Under this section, a guardian may consent to act together in or join in any transaction for which consent or joinder of both spouses is required or may execute a marital property agreement with the other spouse, but may not make, amend or revoke a will.

(2) The powers under sub. (1) are in addition to powers otherwise provided for a guardian of the estate.

History: 1983 a. 186; 1985 a. 57.

The standard for a trial court's exercise of discretion is whether the proposed action will benefit the ward, the estate, or members of the ward's immediate family. In Matter of Guardianship of F.E.H. 154 Wis. 2d 576, 453 N.W.2d 882 (1990).

880.175 Petition for placement of assets in trust. Upon petition by the guardian, a parent, the spouse, any issue or next of kin of any person, assets of the person may, in the discretion of the court and upon its order, after such notice as the court may require, be transferred to the trustee or trustees of an existing revocable living trust created by the person for the benefit of himself or herself and those dependent upon the person for support, or to the trustee or trustees of a trust created for the exclusive benefit of the person, if a minor, which distributes to him or her at age 18 or 21, or to his or her estate, or as he or she appoints if he or she dies prior to age 18 or 21.

History: 1971 c. 41 s. 8; 1971 c. 171; 1971 c. 228 ss. 36, 37; Stats. 1971 s. 880.175; 1977 c. 409.

880.18 Inventory. When a guardian of the estate has been appointed an inventory shall be made in the same manner and subject to the same requirements as are provided for the inventory of a decedent's estate. An appraisal of all or any part of the ward's estate shall be made when ordered by the court.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.18.

880.19 Management of ward's estate. (1) **GENERAL DUTIES.** The guardian of the estate shall take possession of all of the ward's real and personal property, and of rents, income, issues and benefits therefrom, whether accruing before or after the guardian's appointment, and of the proceeds arising from the sale, mortgage, lease or exchange thereof. Subject to such possession the title of all such estate and to the increment and proceeds thereof shall be in the ward and not in the guardian. It is the duty of the guardian of the estate to protect and preserve it, to retain, sell and invest it as hereinafter provided, to account for it faithfully, to perform all other duties required of the guardian by law and at the termination of the guardianship to deliver the assets of the ward to the persons entitled thereto.

(2) **RETENTION OF ASSETS.** (a) The guardian of the estate may, without the approval of the court, retain any real or personal property possessed by the ward at the time of appointment of the guardian or subsequently acquired by the ward by gift or inheritance without regard to ch. 881, so long as such retention constitutes the exercise of the judgment and care under the circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

(b) The guardian of the estate may, with the approval of the court, after such notice as the court directs, retain any real or personal property possessed by the ward at the time of the appointment of the guardian or subsequently acquired by the ward by gift or inheritance for such period of time as shall be designated in the order of the court approving such retention, without regard to ch. 881.

(3) **CONTINUATION OF BUSINESS.** In all cases where the court deems it advantageous to continue the business of a ward, such business may be continued by the guardian of the estate on such terms and conditions as may be specified in the order of the court.

(4) **INVESTMENTS.** (a) The guardian of the estate may, without approval of the court, invest and reinvest the proceeds of sale of any guardianship assets and any other moneys in the guardian's possession in accordance with ch. 881.

(b) The guardian of the estate may, with the approval of the court, after such notice as the court directs, invest the proceeds of sale of any guardianship assets and any other moneys in the guardian's possession in such real or personal property as the court determines to be in the best interests of the guardianship estate, without regard to ch. 881.

(c) No guardian shall lend guardianship funds to himself or herself.

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✓ (5) **SALES AND OTHER DISPOSITIONS.** (a) The guardian of the estate may, without approval of the court, sell any property of the guardianship estate acquired by the guardian pursuant to sub. (4).

✓ (b) The court, on the application of the guardian of the estate or of any other person interested in the estate of any ward, after such notice if any, as the court directs, may authorize or require the guardian to sell, mortgage, pledge, lease or exchange any property of the guardianship estate upon such terms as the court may order, for the purpose of paying the ward's debts, providing for the ward's care, maintenance and education and the care, maintenance and education of the ward's dependents, investing the proceeds or for any other purpose which is in the best interest of the ward.

✓ (c) No guardian shall purchase property of the ward, unless sold at public sale with the approval of the court, and then only if the guardian is a spouse, parent, child, brother or sister of the ward or is a cotenant with the ward in the property.

✓ (d) The provisions of this subsection insofar as they apply to real estate shall be subject to ch. 786.

✓ (6) **TRUST COMPANIES. EXEMPTION FROM INVESTMENT RESTRAINTS.** The limitations of this section relating to retention, sale, investment or reinvestment of any asset shall not be applicable to any bank or trust company authorized to exercise trust powers.

History: 1971 c. 41 ss. 8, 12; Stats. 1971 s. 880.19; 1973 c. 85; 1975 c. 94 s. 91 (9); 1979 c. 32 s. 92 (14); 1993 a. 486.

A guardian is not authorized to make gifts from the guardianship estate to effectuate an estate plan that would avoid future death taxes. *Michael S. B. v. Berns*, 196 Wis. 2d 920, 540 N.W.2d 11 (Ct. App. 1995).

✓ **880.191 Inventories, accounts. (1) VERIFICATION, EXAMINATION IN COURT.** Every guardian shall verify by the guardian's oath every inventory required of the guardian and verification shall be to the effect that the inventory is true of all property which belongs to his or her decedent's estate or his or her ward, which has come to the guardian's possession or knowledge, and that upon diligent inquiry the guardian has not been able to discover any property belonging to the estate or ward which is not included therein. The court, at the request of any party interested, or on its own motion, may examine the guardian on oath in relation thereto, or in relation to any supposed omission.

✱ (2) **CITATION TO FILE INVENTORY AND TO ACCOUNT.** If any guardian neglects to file the inventory or account when required by law, the circuit judge shall call the guardian's attention to the neglect. If the guardian still neglects his or her duty in the premises, the court shall order the guardian to file the inventory and the costs may be adjudged against the guardian.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.191; 1977 c. 449; 1993 a. 486.

✓ **880.192 Fraud, waste, mismanagement.** If the circuit court has reason to believe that any guardian within its jurisdiction has filed a false inventory, claims property or permits others to claim and retain property belonging to the estate which he or she represents, is guilty of waste or mismanagement of the estate or is unfit for the proper performance of duties, the court shall appoint a guardian ad litem for any minor or incompetent person interested and shall order the guardian to file the account. If upon the examination of the account the court deems it necessary to proceed further, a time and place for the adjustment and settlement of the account shall be fixed by the court, and at least 10 days' notice shall be given to the guardian ad litem and to all persons interested. If, upon the adjustment of the account, the court is of the opinion that the interests of the estate and of the persons interested require it, the guardian may be removed and another appointed.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.192; 1977 c. 449.

✱ **880.195 Transfer of Menominee guardianship funds to trust.** The circuit court which has appointed a guardian of the estate of any minor or incompetent who is a member of the Menominee Indian tribe as defined in s. 49.385 or a lawful distributee thereof may direct the guardian to transfer the assets of the minor or incompetent in the guardian's possession to the trustees of the

trust created by the secretary of interior or his or her delegate which receives property of the minors or incompetents transferred from the United States or any agency thereof as provided by P.L. 83-399, as amended, and the assets shall thereafter be held, administered and distributed in accordance with the terms and conditions of the trust.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.195; 1977 c. 449; 1993 a. 27.

✱ **880.21 Use of estate for benefit of wards. (1) APPLICATION OF PERSONAL PROPERTY AND INCOME.** Every guardian shall apply the personal property or the income therefrom or from the real estate, as far as may be necessary for the suitable education, maintenance and support of the ward and of the ward's family, if there be any legally dependent upon the ward for support, and for the care and protection of the ward's real estate. The parents, brothers and sisters of incompetent veterans of all wars are declared members of the incompetent veteran's family, and all payments heretofore made pursuant to court order to any dependent member of the family of any such incompetent, as herein defined, are ratified and approved.

✱ (2) **FOR SUPPLEMENTING PARENT'S SUPPORT OF MINOR.** If any minor has property which is sufficient for his or her maintenance and education in a manner more expensive than his or her parents can reasonably afford, regard being had to the situation and circumstances of the family, the expenses of the minor's education and maintenance may be defrayed out of his or her property in whole or in part, as shall be judged reasonable and be directed by the circuit court.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.21; 1977 c. 449; 1993 a. 486.

✱ **880.215 Lis pendens, void contracts.** A certified copy of the petition and order for hearing provided for in ss. 880.07 and 880.08 may be filed in the office of the register of deeds for the county; and if a guardian shall be appointed upon such application all contracts, except for necessities at reasonable prices, and all gifts, sales and transfers of property made by such insane or incompetent person or spendthrift, after the filing of a certified copy of such petition and order as aforesaid, shall be void. The validity of a contract made by a person under limited guardianship is not void, however, unless the determination is made by the court in its finding under s. 880.33 (3) that the ward is incapable of exercising the power to make contracts.

History: 1971 c. 41 ss. 8, 12; Stats. 1971 s. 880.215; 1973 c. 284; 1997 a. 304.

✓ **880.22 Claims. (1) PAYMENT.** Every general guardian shall pay the just debts of the ward out of the ward's personal estate and the income of the ward's real estate, if sufficient, and if not, then out of the ward's real estate upon selling the same as provided by law. But a temporary guardian shall pay the debts of his or her ward only on order of the court.

✓ (2) **PROCEEDINGS TO ADJUST CLAIMS.** The guardian or a creditor of any ward may apply to the court for adjustment of claims against the ward incurred prior to entry of the order appointing the guardian or the filing of a lis pendens as provided in s. 880.215. The court shall by order fix the time and place it will adjust claims and the time within which all claims must be presented or be barred. Notice of the time and place so fixed and limited shall be given by publication as in estates of decedents; and all statutes relating to claims against and in favor of estates of decedents shall apply. As in the settlement of estates of deceased persons, after the court has made the order no action or proceeding may be commenced or maintained in any court against the ward upon any claim of which the circuit court has jurisdiction.

History: 1971 c. 41 ss. 8, 12; Stats. 1971 s. 880.22; 1977 c. 449; 1993 a. 486.

This section does not authorize payment of attorney fees from the guardianship estate that were incurred by those commencing and prosecuting the guardianship action. *Community Care of Milwaukee County v. Evelyn O. 214 Wis. 2d 433, 571 N.W.2d 700 (Ct. App. 1997).*

✓ **880.23 Actions.** The guardian shall settle all accounts of the ward and may demand, sue for, collect and receive all debts and claims for damages due him or her, or may, with the approval of the circuit court, compound and discharge the same, and shall

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appear for and represent his or her ward in all actions and proceedings except where another person is appointed for that purpose.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.23; 1977 c. 449.

A guardian may not sue for the loss of society and companionship of a ward, nor bring a separate claim for costs incurred or income lost on account of injuries to the ward. *Conant v. Physicians Plus Medical Group, Inc.* 229 Wis. 2d 271, 600 N.W.2d 21 (Ct. App. 1999).

✓ **880.24 Compensation allowed from estate. (1) FEES AND EXPENSES OF GUARDIAN.** Every guardian shall be allowed the amount of the guardian's reasonable expenses incurred in the execution of the guardian's trust including necessary compensation paid to attorneys, accountants, brokers and other agents and servants. The guardian shall also have such compensation for the guardian's services as the court, in which the guardian's accounts are settled, deems to be just and reasonable.

✓ (2) **WARD'S EXPENSES IN PROCEEDINGS.** When a guardian is appointed the court may allow reasonable expenses incurred by the ward in contesting the appointment.

✓ (3) **FEES AND COSTS OF PETITIONER.** (a) Except as provided in par. (b), when a guardian is appointed, the court shall award from the ward's estate payment of the petitioner's reasonable attorney fees and costs, including those fees and costs, if any, related to protective placement of the ward, unless the court finds, after considering all of the following, that it would be inequitable to do so:

✓ 1. The petitioner's interest in the matter, including any conflict of interest that the petitioner may have had in pursuing the guardianship.

✓ 2. The ability of the ward's estate to pay the petitioner's reasonable attorney fees and costs.

✓ 3. Whether the guardianship was contested and, if so, the nature of the contest.

✓ 4. Any other factors that the court considers to be relevant.

✓ (b) If the court finds that the ward had executed a durable power of attorney under s. 243.07 or a power of attorney for health care under s. 155.05 or had engaged in other advance planning to avoid guardianship, the court may not make the award specified in par. (a).

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.24; 1993 s. 486; 1999 s. 183.

Where a temporary guardian committed a clear breach of trust, the trial court had sufficient basis to award the temporary guardian no compensation. *Yamir v. Verma* L.B. 214 Wis. 2d 207, 571 N.W.2d 860 (Ct. App. 1997).

✓ **880.245 Accounting by agent.** The circuit court, upon the application of any guardian appointed by it may order any person who has been entrusted by the guardian with any part of the estate of a decedent or ward to appear before the court, and may require the person to render a full account, on oath, of any property or papers belonging to the estate which have come to the person's possession and of his or her proceedings thereon. If the person refuses to appear and render an account the court may proceed against him or her as for contempt.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.245; 1977 c. 449.

✓ **880.25 Accounting. (1) ANNUAL REPORTS.** Every guardian, except a corporate guardian, shall, prior to April 15 of each year, file an account under oath specifying the amount of property received and held or invested by the guardian, the nature and manner of the investment, and the guardian's receipts and expenditures during the preceding calendar year. When ordered by the court, the guardian shall within 30 days render and file a like account for any shorter term. In lieu of the filing of these accounts before April 15 of each year, the court may, by appropriate order upon motion of the guardian, direct the guardian of an estate to thereafter render and file the annual accountings within 60 days after the anniversary date of the guardian's qualification as guardian, with the accounting period from the anniversary date of qualification to the ensuing annual anniversary date. When any guardian of a minor has custody of the ward and the care of the ward's education, the guardian's report shall state the time that the ward attended school during the time for which the account is rendered

and the name of the school. [The guardian shall also report any change in the status of the surety upon the guardian's bond.] ✓

✓ (2) **DISPLAY OF ASSETS.** Upon rendering the account the guardian shall produce for examination by the court, or some person satisfactory to the court, all securities, evidences of deposit and investments reported, which shall be described in the account in sufficient detail so that they may be readily identified. It shall be ascertained whether the securities, evidences of deposit and investments correspond with the account.

✓ (3) **SMALL ESTATES.** When the whole estate of a ward or of several wards jointly, under the same guardianship, does not exceed \$1,000 in value, the guardian shall be required to render account only upon the termination of the guardian's guardianship, unless otherwise ordered by the court.

✓ (4) **EXAMINATION OF ACCOUNTS.** The account shall be promptly examined under the court's direction and if it is not satisfactory it shall be examined on 8 days' notice and the court shall make such order thereon as justice requires. Notice to the guardian may be served personally or by certified mail as the court directs. When the examination of a guardian's account is upon notice a guardian ad litem of the ward may be appointed.

✓ (5) **NOTICE.** No action by the court upon any account shall be final unless it is upon notice.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.25; 1987 s. 220, 403; 1993 s. 486.

✗ **880.251 Removal of guardian.** If a guardian resides out of this state; neglects to render the account within the time provided by law or the order of the court; neglects to settle the estate according to law or to perform any judgment or order of the court; absconds or becomes insane or otherwise incapable or unsuitable to discharge the trust, the circuit court may remove the guardian and appoint a successor. An order of removal may not be made until the person affected has been notified, under s. 879.67, or, if a resident, such notice as the court deems reasonable, to show cause at a specified time why he or she should not be removed.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.251; 1977 c. 449; 1981 c. 314.

✗ **880.252 Accounts; failure of guardian to file.** If a guardian fails to file the guardian's account as required by law or ordered by the court, the court may, upon its own motion or upon the petition of any party interested, issue an order to the sheriff ordering the guardian to show cause before the court why the guardian should not immediately make and file the guardian's reports or accounts. If a guardian fails, neglects or refuses to make and file any report or account after having been cited by the court so to do, or if the guardian fails to appear in court as directed by a citation issued under direction and by authority of the court, the court may, upon its own motion or upon the petition of any interested party, issue a warrant directed to the sheriff ordering that the guardian be brought before the court to show cause why the guardian should not be punished for contempt. If the court finds that the failure, refusal or neglect is wilful or inexcusable, the guardian may be fined not to exceed \$50 or imprisoned not to exceed 10 days or both.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.252; 1993 s. 486.

✗ **880.253 Formal accounting by guardians.** The judge may at any time require an accounting by any guardian at a hearing after notice to all interested persons including sureties on the bond of a guardian. The sureties on a bond of a guardian may once in every 3-year period petition the court for such a hearing.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.253.

✓ **880.26 Termination of guardianship. (1) GUARDIANSHIP OF THE PERSON.** A guardianship of the person shall terminate when any of the following occurs:

✗ (a) A minor ward attains his or her majority, unless the minor is incompetent.

✗ (b) A minor ward lawfully marries.

(c) The court adjudicates a former incompetent to be competent.

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- ✓ (2) **GUARDIANSHIP OF THE ESTATE.** A guardianship of the estate shall terminate when any of the following occurs:
- * (a) A minor ward attains his or her majority.
 - * (b) A minor ward lawfully marries and the court approves the termination.
 - (c) The court adjudicates a former incompetent or a spendthrift to be capable of handling his or her property.
 - (d) A ward dies, except when the estate can be settled as provided by s. 880.28.
- ✓ (3) **DEPLETED GUARDIANSHIPS.** When the court determines that the estate of the ward is below \$5,000 and reduced to a point where it is to the advantage of the ward to dispense with the guardianship, the court may terminate the guardianship and authorize disposition of the remaining assets as provided by s. 880.04 (2). The court, as a part of the disposition, may order a suitable amount paid to the county treasurer under order of the court or reserved in the guardianship to assure the ward a decent burial, a marker and care for the grave. In the case of an insolvent guardianship, the court may order an amount not exceeding \$400 reserved in the guardianship or paid to the county treasurer under order of the court to assure the ward a decent burial.

History: 1971 c. 41 ss. 8, 12; Stats. 1971 s. 880.26; 1973 c. 284; 1983 a. 217; 1989 a. 307; 1993 a. 486; 1999 a. 85.
New grounds for termination. 54 MLR 111.

- ✓ **880.27 Settlement of accounts.** Upon termination of a guardianship, or upon resignation, removal or death of a guardian, such guardian or the guardian's personal representative shall forthwith render the guardian's final account to the court and to the former ward, the successor guardian or the deceased ward's personal representative as the case may be. Upon approval of the account and filing proper receipts the guardian shall be discharged and the guardian's bond released.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.27; 1993 a. 486.

- ✓ **880.28 Summary settlement of small estates.** When a ward dies leaving an estate which can be settled summarily under s. 867.01, the court may approve such settlement and distribution by the guardian, without the necessity of appointing a personal representative.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.28; 1975 c. 200.

- * **880.29 Delivery of property to foreign guardian.** When property of a nonresident ward is in the possession of or due from a guardian or personal representative appointed in this state, the appointing court may order such property delivered to the foreign guardian upon filing a verified petition, accompanied by a copy of his or her appointment and bond, authenticated so as to be admissible in evidence, and upon 10 days' notice to the resident guardian or personal representative. Such petition shall be denied if granting it shall appear to be against the interests of the ward. The receipt of the foreign guardian for the property so delivered shall be taken and filed with the other papers in the proceeding, and a certified copy thereof shall be sent to the court which appointed such guardian.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.29; 1975 c. 200.

- * **880.295 Guardian for mentally ill patient or conservator for county hospital patient or county home resident.**
- (1) When a patient in any state or county hospital or mental hospital or in any state institution for the mentally deficient, or a resident of the county home or infirmary, appears in need of a guardian, and does not have a guardian, the department of health and family services by its collection and deportation counsel, or the county corporation counsel, may apply to the circuit court of the county in which the patient resided at the time of commitment or the circuit court of the county in which the facility in which the patient resides is located for the appointment of a guardian of the person and estate, or either, or for the appointment of a conservator of the estate, and the court, upon the application, may appoint the guardian or conservator in the manner provided for the

appointment of guardians under ss. 880.08 (1) and 880.33 or for the appointment of conservators under s. 880.31. If application is made by a corporation counsel, a copy of the petition made to the court shall be filed with the department of health and family services. If application is made by a corporation counsel for appointment of a guardian of the estate of the patient or resident, or by the patient or resident for appointment of a conservator of the patient's or resident's estate, the court may designate the county as guardian or conservator if the court finds that no relative or friend is available to serve as guardian or conservator and the county is not required to make or file any oath or give any bond or security, except in the discretion of the court making the appointment, as similarly provided under s. 223.03 (8) in the case of the appointment of a trust company bank corporation. The court may place any limitations upon the guardianship or conservatorship as it deems to be in the best interest of the patient. Before any county employee administers the funds of a person's estate of which the county has been appointed guardian or conservator, the employee must be designated as securities agent in the classified service of the county, and the employee's designation as securities agent shall appear on all court papers which the security agent signs in the name of the county as guardian or conservator. The securities agent, before entering upon the duties, shall also furnish an official bond in such amount and with such sureties as the county board determines, subject to the prior approval of the amount by the court assigned to exercise jurisdiction. The bond shall be filed in the office of the register in probate, and a duplicate original thereof filed in the office of the county clerk. A conservatorship under this section shall be terminated by the court upon discharge of the patient unless application for continued conservatorship is made. The superintendent or director of the facility shall notify the court of the discharge of a patient for whom a guardian or conservator has been appointed under this subsection.

- * (2) Any guardian heretofore or hereafter appointed for any such inmate, who, having property of his or her ward in his or her possession or control exceeding \$200 in value, fails to pay within 3 months after receipt of any bill thereof for the ward's care and support from the department of health and family services or the agency established pursuant to s. 46.21, shall, upon application of the collection and deportation counsel of said department or in counties having a population of 500,000 or more, the district attorney, forthwith be removed.

History: 1971 c. 41 ss. 8, 12; Stats. 1971 s. 880.295; 1975 c. 393, 421; 1977 c. 449; 1989 a. 31; 1993 a. 486; 1995 a. 27 s. 9126 (19).

- ✓ **880.31 Voluntary proceedings; conservators.** (1) Any adult resident who believes that he or she is unable properly to manage his or her property or income may voluntarily apply to the circuit court of the county of his or her residence for appointment of a conservator of the estate. Upon receipt of the application the court shall fix a time and place for hearing the application and direct to whom and in what manner notice of the hearing shall be given.

- ✓ (2) At the time of such hearing the applicant shall be personally examined and if the court is satisfied that the applicant desires a conservator and that the fiduciary nominated is suitable, the court may appoint the nominee as conservator and issue letters of conservatorship to the nominee upon the filing of a bond in the amount fixed by the court.

- ✓ (3) A conservator shall have all the powers and duties of a guardian of the property of an incompetent person. The conservator's powers shall cease upon being removed by the court or upon death of the person whose estate is being conserved.

- ✓ (4) Any person whose estate is under conservatorship may apply to the court at any time for termination thereof. Upon such application, the court shall fix a time and place for hearing and direct that 10 days' notice by mail be given to the person's guardian, if any, the conservator and the presumptive heirs of the applicant. Upon such hearing, the court shall, unless it is clearly shown that the applicant is incompetent, remove the conservator and order the property restored to the applicant, or if the applicant so

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desires and the nominee is suitable, the court may appoint a successor conservator.

✓ (5) If the court shall upon such hearing determine that the person whose estate is administered by a conservator may be incapable of handling his or her estate, the court shall order the conservatorship continued, or if the applicant so desires and the nominee is suitable, the court may appoint a successor conservator.

✓ (6) Appointment of a conservator shall not be evidence of the competency or incompetency of the person whose estate is being administered.

✓ (7) If an application for conservatorship is filed, the fee prescribed in s. 814.66 (1) (b) shall be paid at the time of the filing of the inventory or other documents setting forth the value of the estate.

History: 1971 c. 41 s. 8; Stats. 1971 s. 880.31; 1975 c. 393, 421; 1977 c. 449; 1981 c. 317, 391; 1993 a. 486.

A gift by a competent conservatee without the approval of the conservator was void. *Zobel v. Fennedael*, 127 Wis. 2d 382, 379 N.W.2d 887 (Ct. App. 1985).

★ **880.32 Notes and mortgages of minor veterans.** Notwithstanding any provision of this chapter or any other law to the contrary, any minor who served in the active armed forces of the United States at any time after August 27, 1940, and the husband or wife of such minor may execute in his or her own right, notes or mortgages, the payment of which is guaranteed or insured by the U.S. department of veterans affairs or the federal housing administrator under the servicemen's readjustment act of 1944 or the national housing act or any acts supplementary thereto or amendatory thereof. In connection with such transactions, such minors may sell, release or convey such mortgaged property and litigate or settle controversies arising therefrom, including the execution of releases, deeds and other necessary papers or instruments. Such notes, mortgages, releases, deeds and other necessary papers or instruments when so executed shall not be subject to avoidance by such minor or the husband or wife of such minor upon either or both of them attaining the age of 18 because of the minority of either or both of them at the time of the execution thereof.

History: 1971 c. 41 s. 8; 1971 c. 228 s. 36; Stats. 1971 s. 880.32; 1989 a. 56; 1997 a. 188.

✓ **880.33 Incompetency; appointment of guardian.** (1)

Whenever it is proposed to appoint a guardian on the ground of incompetency, a licensed physician or licensed psychologist, or both, shall furnish a written statement concerning the mental condition of the proposed ward, based upon examination. The privilege under s. 905.04 shall not apply to this statement. A copy of the statement shall be provided to the proposed ward, guardian ad litem and attorney. Prior to the examination, under this subsection, of a person alleged to be not competent to refuse psychotropic medication under s. 880.07 (1m), the person shall be informed that his or her statements may be used as a basis for a finding of incompetency and an order for protective services, including psychotropic medication. The person shall also be informed that he or she has a right to remain silent and that the examiner is required to report to the court even if the person remains silent. The issuance of such a warning to the person prior to each examination establishes a presumption that the person understands that he or she need not speak to the examiner.

✓ (2) (a) 1. The proposed ward has the right to counsel whether or not present at the hearing on determination of competency. The court shall in all cases require the appointment of an attorney as guardian ad litem in accordance with s. 757.48 (1) and shall in addition require representation by full legal counsel whenever the petition contains the allegations under s. 880.07 (1m) or if, at least 72 hours before the hearing, the alleged incompetent requests; the guardian ad litem or any other person states that the alleged incompetent is opposed to the guardianship petition; or the court determines that the interests of justice require it. The proposed ward has the right to a trial by a jury if demanded by the proposed ward, attorney or guardian ad litem, except that if the petition con-

tains the allegations under s. 880.07 (1m) and if notice of the time set for the hearing has previously been provided to the proposed ward and his or her counsel, a jury trial is deemed waived unless demanded at least 48 hours prior to the time set for the hearing. The number of jurors shall be determined under s. 756.06 (2) (b). The proposed ward, attorney or guardian ad litem shall have the right to present and cross-examine witnesses, including the physician or psychologist reporting to the court under sub. (1). The attorney or guardian ad litem for the proposed ward shall be provided with a copy of the report of the physician or psychologist at least 96 hours in advance of the hearing. Any final decision of the court is subject to the right of appeal.

✓ (2) If the person requests but is unable to obtain legal counsel, the court shall appoint legal counsel. If the person is represented by counsel appointed under s. 977.08 in a proceeding for a protective placement under s. 55.06 or for the appointment of a guardian under s. 880.07 (1m), the court shall order the counsel appointed under s. 977.08 to represent the person.

✓ (3) If the person is an adult who is indigent, the county of legal settlement shall be the county liable for any fees due the guardian ad litem and, if counsel was not appointed under s. 977.08, for any legal fees due the person's legal counsel. If the person is a minor, the person's parents or the county of legal settlement shall be liable for any fees due the guardian ad litem as provided in s. 48.235 (8).

✓ (b) If requested by the proposed ward or anyone on the proposed ward's behalf, the proposed ward has the right at his or her own expense, or if indigent at the expense of the county where the petition is filed, to secure an independent medical or psychological examination relevant to the issue involved in any hearing under this chapter, and to present a report of this independent evaluation or the evaluator's personal testimony as evidence at the hearing.

★ (d) The hearing on a petition which contains allegations under s. 880.07 (1m) shall be held within 30 days after the date of filing of the petition, except that if a jury trial demand is filed the hearing shall be held within either 30 days after the date of filing of the petition or 14 days after the date of the demand for a jury trial, whichever is later. A finding by a court under s. 51.67 that there is probable cause to believe that the person is a proper subject for guardianship under s. 880.33 (4m) has the effect of filing a petition under s. 880.07 (1m).

✓ (e) Every hearing on a petition under s. 880.07 (1m) shall be open, unless the proposed ward or his or her attorney acting with the proposed ward's consent moves that it be closed. If the hearing is closed, only persons in interest, including representatives of providers of service and their attorneys and witnesses, may be present.

★ (3) In a finding of limited incompetency, guardianship of the person shall be limited in accordance with the order of the court accompanying the finding of incompetency. If the proposed incompetent has executed a power of attorney for health care under ch. 155, the court shall give consideration to the appointment of the health care agent for the individual as the individual's guardian. The court shall make a specific finding as to which legal rights the person is competent to exercise. Such rights include but are not limited to the right to vote, to marry, to obtain a motor vehicle operator's license or other state license, to hold or convey property and the right to contract. The findings of incompetency must be based upon clear and convincing evidence. The court shall determine if additional medical or psychological testimony is necessary for the court to make an informed decision respecting competency to exercise legal rights and may obtain assistance in the manner provided in s. 55.06 (8) whether or not protective placement is made. The guardian, ward or any interested person may at any time file a petition with the court requesting a restoration of any such legal right, and specifying the reasons therefor. Such petition may request that a guardianship of the person be terminated and a guardianship of property be established.

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(4) When it appears by clear and convincing evidence that the person is incompetent, the court shall appoint a guardian.

(4m) (a) If the court finds by clear and convincing evidence that the person is not competent to refuse psychotropic medication and the allegations under s. 880.07 (1m) are proven, the court shall appoint a guardian to consent to or refuse psychotropic medication on behalf of the person as provided in the court order under par. (b).

(b) In any case where the court finds that the person is not competent to refuse psychotropic medication under s. 880.07 (1m) and appoints a guardian to consent to or refuse psychotropic medication on behalf of the person, the court shall do all of the following:

1. Order the appropriate county department under s. 46.23, 51.42 or 51.437 to develop or furnish, to provide to the ward, and to submit to the court, a treatment plan specifying the protective services, including psychotropic medication as ordered by the treating physician, that the proposed ward should receive.

2. Review the plan submitted by the county department under subd. 1., and approve, disapprove or modify the plan.

2m. If the court modifies the treatment plan under subd. 2., the court shall order the appropriate county department under s. 46.23, 51.42 or 51.437 to provide the modified treatment plan to the ward.

3. Order protective services under ch. 55.

4. Order the appropriate county department under s. 46.23, 51.42 or 51.437 to ensure that protective services, including psychotropic medication, are provided under ch. 55, in accordance with the approved treatment plan.

(4r) If a person substantially fails to comply with the administration of psychotropic medication, if ordered under the approved treatment plan under sub. (4m), the court may authorize the person's guardian to consent to forcible administration of psychotropic medication to the person, if all of the following occur before the administration:

(a) The corporation counsel of the county or the person's guardian files with the court a joint statement by the guardian and the director or the designee of the director of the treatment facility that is serving the person or a designated staff member of the appropriate county department under s. 46.23, 51.42 or 51.437, stating that the person has substantially failed to comply. The statement shall be sworn to be true and may be based on the information and beliefs of the individuals filing the statement.

(b) Upon receipt of the joint statement of noncompliance, if the court finds by clear and convincing evidence that the person has substantially failed to comply with the administration of psychotropic medication under the treatment plan, the court may do all of the following:

1. Authorize the person's guardian to consent to forcible administration by the treatment facility to the person, on an outpatient basis, of psychotropic medication ordered under the treatment plan.

2. If the guardian consents to forcible administration of psychotropic medication as specified in subd. 1., authorize the sheriff or other law enforcement agency, in the county in which the person is found or in which it is believed that the person may be present, to take charge of and transport the person, for outpatient treatment, to an appropriate treatment facility.

(c) If the court authorizes a sheriff or other law enforcement agency to take charge of and transport the person as specified in par. (b) 2., a staff member of the appropriate county department under s. 46.23, 51.42 or 51.437 or of the treatment facility shall, if feasible, accompany the sheriff or other law enforcement agency officer and shall attempt to convince the person to comply voluntarily with the administration of psychotropic medication under the treatment plan.

(5) In appointing a guardian, the court shall take into consideration the opinions of the alleged incompetent and of the members

of the family as to what is in the best interests of the proposed incompetent. However, the best interests of the proposed incompetent shall control in making the determination when the opinions of the family are in conflict with the clearly appropriate decision. The court shall also consider potential conflicts of interest resulting from the prospective guardian's employment or other potential conflicts of interest. If the proposed incompetent has executed a power of attorney for health care under ch. 155, the court shall give consideration to the appointment of the health care agent for the individual as the individual's guardian.

(5m) No person, except a nonprofit corporation approved by the department of health and family services under s. 880.35, who has guardianship of the person of 5 or more adult wards unrelated to the person may accept appointment as guardian of the person of another adult ward unrelated to the person, unless approved by the department. No such person may accept appointment as guardian of more than 10 such wards unrelated to the person.

(6) All court records pertinent to the finding of incompetency are closed but subject to access as provided in s. 55.06 (17). The fact that a person has been found incompetent is accessible to any person who demonstrates to the custodian of the records a need for that information.

(7) A finding of incompetency and appointment of a guardian under this subchapter is not grounds for involuntary protective placement. Such placement may be made only in accordance with s. 55.06.

(8) At the time of determination of incompetency under this section, the court may:

(a) Hear application for the appointment of a conservator or limited guardian of property.

(b) If the proposed incompetent has executed a power of attorney for health care under ch. 155, find that the power of attorney for health care instrument should remain in effect. If the court so finds, the court shall so order and shall limit the power of the guardian to make those health care decisions for the ward that are not to be made by the health care agent under the terms of the power of attorney for health care instrument, unless the guardian is the health care agent under those terms.

(9) All the rights and privileges afforded a proposed incompetent under this section shall be given to any person who is alleged to be ineligible to register to vote or to vote in an election by reason that such person is incapable of understanding the objective of the elective process. The determination of the court shall be limited to a finding that the elector is either eligible or ineligible to register to vote or to vote in an election by reason that the person is or is not capable of understanding the objective of the elective process. The determination of the court shall be communicated in writing by the clerk of court to the election official or agency charged under s. 6.48, 6.92, 6.925 or 6.93 with the responsibility for determining challenges to registration and voting which may be directed against that elector. The determination may be reviewed as provided in s. 880.34 (4) and (5) and any subsequent determination of the court shall be likewise communicated by the clerk of court.

History: 1973 c. 284; 1975 c. 393, 421; 1977 c. 29, 187; 1977 c. 203 s. 106; 1977 c. 299, 318, 394, 418, 447; 1979 c. 110, 356; 1981 c. 379; 1987 a. 366; Sup. Ct. Order, 151 Wis. 2d xxii, xxiv; 1989 a. 200; Sup. Ct. Order, 153 Wis. 2d xxim xxv (1989); 1991 a. 32, 39; 1993 a. 16, 316; 1995 a. 27 s. 9126 (19); Sup. Ct. Order No. 96-08, 207 Wis. 2d xv (1997); 1997 a. 237.

Judicial Council Note, 1990: Sub. (3) is amended by striking reference to the right to testify in judicial or administrative proceedings. The statute conflicts with s. 906.01, as construed in *State v. Hanson*, 149 Wis. 2d 474 (1989) and *State v. Dwyer*, 149 Wis. 2d 850 (1989). [Re Order eff. 1-1-91]

A "common sense" finding of incompetency was insufficient for placement under s. 55.06. If competent when sober, an alcoholic has the right to choose to continue an alcoholic lifestyle. *Guardianship & Protective Placement of Shaw*, 87 Wis. 2d 503, 275 N.W.2d 143 (Ct. App. 1979).

The written report of a physician or psychologist under (sub. 1) is hearsay and not admissible in a contested hearing without in-court testimony of the preparing expert. In *Matter of Guardianship of R.S.*, 162 Wis. 2d 197, 470 N.W.2d 260 (1991).

A guardian may not be given authority to forcibly administer psychotropic drugs to a ward. An order for the forcible administration of psychotropic drugs may only

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be made in a ch. 51 proceeding. State ex rel. Roberts v. Waukesha DHS, 171 Wis. 2d 266, 491 N.W.2d 114 (Ct. App. 1992).

The expenses of a guardian ad litem in guardianship proceedings are correctly assessed to the ward under s. 757.48. Assessment of the costs of a medical expert are within the discretion of the court. Elgin and Carol W. v. DHFS, 221 Wis. 2d 36, 584 N.W.2d 195 (Ct. App. 1998).

The statutory provisions for an interested person's formal participation in guardianship and protective placement hearings are specific and limited. No statute provides for interested persons to demand a trial, present evidence or raise evidentiary objections. A court could consider such participation helpful and in its discretion allow an interested person to participate to the extent it considers appropriate. Coston v. Joseph P., 222 Wis. 2d 1, 586 N.W.2d 52 (Ct. App. 1998).

Sub. (6) requires the closing only of documents filed with the register in probate with respect to ch. 880 proceedings. 67 Am. Gen. 130.

A guardian has general authority to consent to medication for a ward, but may consent to psychotropic medication only in accordance with ss. 880.07 (1m) and 880.33 (4m) and (4r). The guardian's authority to consent to medication or medical treatment of any kind is not affected by an order for protective placement or services. OAG S-99.

880.331 Guardian ad litem in incompetency cases. (1) APPOINTMENT. The court shall appoint a guardian ad litem whenever it is proposed that the court appoint a guardian on the ground of incompetency under s. 880.33, protectively place a person or order protective services under s. 55.06, review any protective placement or protective service order under s. 55.06 or terminate a protective placement under s. 55.06.

(2) QUALIFICATIONS. The guardian ad litem shall be an attorney admitted to practice in this state. No person who is an interested party in a proceeding, appears as counsel in a proceeding on behalf of any party or is a relative or representative of an interested party may be appointed guardian ad litem in that proceeding.

(3) RESPONSIBILITIES. The guardian ad litem shall be an advocate for the best interests of the proposed ward or alleged incompetent as to guardianship, protective placement and protective services. The guardian ad litem shall function independently, in the same manner as an attorney for a party to the action, and shall consider, but shall not be bound by, the wishes of the proposed ward or alleged incompetent or the positions of others as to the best interests of the proposed ward or alleged incompetent. The guardian ad litem has none of the rights or duties of a general guardian.

(4) GENERAL DUTIES. A guardian ad litem shall do all of the following:

(a) Interview the proposed ward or alleged incompetent and explain the applicable hearing procedure, the right to counsel and the right to request or continue a limited guardianship.

(b) Advise the proposed ward or alleged incompetent, both orally and in writing, of that person's rights to a jury trial, to an appeal, to counsel and to an independent medical or psychological examination on the issue of competency, at county expense if the person is indigent.

(c) Request that the court order additional medical, psychological or other evaluation, if necessary.

(d) If applicable, inform the court that the proposed ward or alleged incompetent objects to a finding of incompetency, the present or proposed placement or the recommendation of the guardian ad litem as to the proposed ward's or alleged incompetent's best interests or that the proposed ward's or alleged incompetent's position on these matters is ambiguous.

(e) Present evidence concerning the best interests of the proposed ward or alleged incompetent, if necessary.

(f) Report to the court on any other relevant matter that the court requests.

(5) DUTIES IN REVIEWS. In any review of a protective placement under s. 55.06 or of a protective service order under s. 55.05, the guardian ad litem shall do all of the following:

(a) Interview the ward to explain the review procedure, the right to an independent evaluation, the right to counsel and the right to a hearing.

(b) Provide the information under par. (a) to the ward in writing.

(c) Secure an additional evaluation of the ward, if necessary.

(d) Review the annual report and relevant reports on the ward's condition and placement.

(c) Review the ward's condition, placement and rights with the guardian.

(f) If relevant, report to the court that the ward objects to the finding of continuing incompetency, the present or proposed placement, the position of the guardian or the recommendation of the guardian ad litem as to the best interests of the ward or if there is ambiguity about the ward's position on these matters.

(g) If relevant, report to the court that the ward requests the appointment of counsel or an adversary hearing.

(6) COMMUNICATION TO A JURY. In jury trials under ch. 55 or 880, the court or guardian ad litem may tell the jury that the guardian ad litem represents the interests of the proposed ward or alleged incompetent.

(7) TERMINATION AND EXTENSION OF APPOINTMENT. The appointment of a guardian ad litem under sub. (1) terminates upon the entry of the court's final order or upon the termination of any appeal in which the guardian ad litem participates, even if counsel has been appointed for the proposed ward or alleged incompetent. The court may extend that appointment, or reappoint a guardian ad litem whose appointment under this section has terminated, by an order specifying the scope of responsibilities of the guardian ad litem. At any time, the guardian ad litem, any party or the person for whom the appointment is made may request that the court terminate any extension or reappointment. The guardian ad litem may appeal, may participate in an appeal or may do neither. If an appeal is taken by any party and the guardian ad litem chooses not to participate in that appeal, he or she shall file with the appellate court a statement of reasons for not participating. Irrespective of the guardian ad litem's decision not to participate in an appeal, the appellate court may order the guardian ad litem to participate in the appeal.

(8) COMPENSATION. On order of the court, the guardian ad litem appointed under this chapter shall be allowed reasonable compensation to be paid by the county of venue, unless the court otherwise directs or unless the guardian ad litem is appointed for a minor, in which case the compensation of the guardian ad litem shall be paid by the minor's parents or the county of venue as provided in s. 48.235 (8). If the court orders a county to pay the compensation of the guardian ad litem, the amount ordered may not exceed the compensation paid to private attorneys under s. 977.08 (4m) (b).

History: Sup. Ct. Order, 151 Wis. 2d xxv (1989); 1993 a. 16; 1995 a. 27; 1997 a. 237.

Judicial Council Note, 1990: This is a new section which more comprehensively identifies the situations in which a guardian ad litem should be appointed, the duration of such appointments and the guardian ad litem's duties. Sub. (1) requires such an appointment whenever it is proposed to appoint a guardian pursuant to s. 880.33, to protectively place a person, to provide protective services in lieu of placement under s. 55.06 (for instances in which a finding of incompetency is first required), to terminate a protective placement under s. 55.06 and upon the annual review required by State ex rel. Warts v. Combined Community Services Board of Milwaukee, 122 Wis. 2d 65 (1985).

Sub. (2) identifies the qualifications for a guardian ad litem.

Sub. (3) enumerates the general responsibilities of the guardian ad litem, consistent with the similar definition for other situations in which guardian ad litem are appointed.

Sub. (4) codifies the specific duties in guardianship, protective placement and protective services situations which were previously enumerated in s. 880.33 (2) (c), which is repealed. Sub. (4) refers to alleged incompetents. This is done recognizing that the term may sometimes apply to persons already adjudicated as incompetent.

Sub. (5) is new and enumerates the duties of the guardian ad litem in reviews, consistent with the Warts decision.

A particularly troublesome issue is addressed in subs. (4) (d) and (5) (f). The position of the committee is that the guardian ad litem is to notify the court if the proposed ward objects to the listed matters so that adversary counsel can be appointed. In practice, the proposed ward may not be clear about his or her view of these matters. In such situations, the guardian ad litem is required to notify the court so the court can decide whether there is an objection. If there is, adversary counsel is to be appointed.

Sub. (6) addresses the subject of jury communication and is new, as is sub. (8) on fees. Fees for indigent proposed wards are to be paid by the county. In other situations the court may direct that payment to be made by any other appropriate person.

Sub. (7) provides for the termination of the appointment upon the conclusion of the matter, unless the court extends the appointment or unless the guardian ad litem decides not to participate in an appeal. Even if adversary counsel is appointed, the guardian ad litem is to continue to represent the best interests as opposed to wishes of the ward. The subsection leaves to the court's discretion whether there are useful specific functions the guardian ad litem can perform after the final order which lead to reappointment or extension. Such an extension or reappointment may be until the annual review required by Warts, but the scope of the duties must be specified. The

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court may extend the guardian ad litem's responsibilities to include any review, but this does not occur unless the court expressly so orders. [Re Order effective Jan. 1, 1990]

There must be an annual review of each protective placement by a judicial officer. The requirements of ss. 51.15 and 51.20 must be afforded to protectively placed individuals facing involuntary commitment under s. 55.06 (9) (d) and (e). State ex rel. Wallis v. Combined Community Services, 122 Wis. 2d 65, 362 N.W.2d 104 (1985).

A substantial relationship test applies for determining the need for attorney disqualification. Adversary counsel for the subject of an involuntary commitment may not be named guardian ad litem when the procedure is converted to a guardianship. Guardianship of Tamara L.F. 177 Wis. 2d 770, 505 N.W.2d 333 (Cl. App. 1993).

The court's power to appropriate compensation for court-appointed counsel is necessary for the effective operation of the judicial system. In ordering compensation for court ordered attorneys, a court should abide by the s. 977.08 (4m) rate when it can retain qualified and effective counsel at that rate, but should order compensation at the rate under SCR 81.01 or 81.02 or a higher rate when necessary to secure effective counsel. Friedrich v. Dane County Circuit Ct. 192 Wis. 2d 1, 531 N.W.2d 32 (1995).

880.34 Duration of guardianship; review. (1) Any guardianship of an individual found to be incompetent under this chapter shall continue during the life of the incompetent, or until terminated by the court. Upon reaching the age of majority, an incompetent subject to guardianship under this chapter shall be reviewed by the court for the purpose of determining whether the guardianship should be continued or modified. The court shall make a specific finding of any rights under s. 880.33 (3) which the individual is competent to exercise at the time.

(2) The court shall review and may terminate the guardianship of the person of an incompetent upon marriage to any person who is not subject to a guardianship.

(3) A ward of the age of 18 or over, any interested person on the ward's behalf, or the ward's guardian may petition the court which made such appointment or the court in the ward's county of residence to have the guardian discharged and a new guardian appointed, or to have the guardian of the ward's property designated as a limited guardian.

(4) A ward who is 18 years of age or older, any interested person acting on the ward's behalf, or the ward's guardian may petition for a review of incompetency. Upon such a petition for review, the court shall conduct a hearing at which the ward shall be present and shall have the right to a jury trial, if demanded. The ward shall also have the right to counsel and the court shall appoint counsel if the ward is unable to obtain counsel. If the ward is indigent, counsel shall be provided at the expense of the ward's county of legal settlement.

(5) After a hearing under sub. (4) or on its own motion, a court may terminate or modify a guardianship of an incompetent.

(6) (a) If the court appoints a guardian under s. 880.33 (4m) (a), the court shall do all of the following:

1. Order the county department responsible for ensuring that the person receives appropriate protective services to review, at least once every 12 months from the date of the appointment, the status of the person and file a written evaluation with the court, the person and the person's guardian. Guardianship and protective services orders for psychotropic medication under ch. 55 shall be reviewed annually. The evaluation shall include a description of facts and circumstances that indicate whether there is a substantial likelihood, based on the person's treatment record, that the person would meet the standard specified under s. 880.07 (1m) (c) if protective services, including psychotropic medication, were withdrawn. The substantial likelihood need not be evidenced by episodes in the person's history that are specified in s. 880.07 (1m) (cm). The evaluation shall also include recommendations for discharge or changes in the treatment plan or services, if appropriate.

2. Annually, appoint a guardian ad litem to meet with the person and to review the evaluations under subd. 1. The guardian ad litem shall inform the person and the guardian of all of the following:

a. The person's right to representation by full legal counsel under par. (h).

b. The right to an independent evaluation under par. (d) of the person's need for a guardian for the purpose of consenting to or

refusing psychotropic medication and the need for and appropriateness of the current treatment or services.

c. The right to a hearing under par. (e) on the need for a guardian for the purpose of consenting to or refusing protective services, including psychotropic medication, and the need for and appropriateness of the current treatment or services.

(b) The court shall ensure that the person is represented by full legal counsel if requested by the person, the guardian or the guardian ad litem.

(c) The guardian ad litem shall file with the court a written report stating the guardian ad litem's conclusions with respect to all of the following:

1. Whether an independent evaluation should be conducted under par. (d).

2. Whether the person continues to be a proper subject for guardianship under s. 880.33 (4m) (a) and protective services, including psychotropic medication.

3. Whether a change in the treatment plan or protective services, including psychotropic medication, is warranted.

4. Whether the person or the guardian requests a change in status, treatment plan or protective services.

5. Whether a hearing should be held on the continued need for guardianship under s. 880.33 (4m) (a) and protective services, including psychotropic medication.

(d) Following review of the evaluation under par. (a) 1. and the guardian ad litem's report under par. (c), the court shall order an independent evaluation of the person's need for continued guardianship under s. 880.33 (4m) (a) and protective services or the appropriateness of the treatment plan or protective services, if requested by the person, the guardian or the guardian ad litem or if the court determines that an independent evaluation is necessary.

(e) The court shall order a hearing under this subsection upon request of the person, the guardian, the guardian ad litem or any interested person. The court may hold a hearing under this subsection on its own motion.

(f) The court shall do one of the following after holding a hearing under this subsection or, if no hearing is held, after reviewing the guardian ad litem's report and other information filed with the court:

1. Order continuation of the guardianship under s. 880.33 (4m) (a) and protective services order, without modification. The standard for continuation of protective services, including psychotropic medication, is a substantial likelihood, based on the person's treatment record, that the person would meet the standard specified under s. 880.07 (1m) (c) if protective services, including psychotropic medication, were withdrawn. The substantial likelihood need not be evidenced by episodes in the person's history that are specified in s. 880.07 (1m) (cm).

2. Order continuation of the guardianship under s. 880.33 (4m) (a), with modification of the protective services order.

3. Terminate the guardianship under s. 880.33 (4m) (a) and protective services order.

History: 1973 c. 284; 1987 s. 366; 1989 s. 56; 1993 s. 316, 486.

880.35 Nonprofit corporation as guardian. A private nonprofit corporation organized under ch. 181, 187 or 188 is qualified to act as guardian of the person or of the property or both, of an individual found to be in need of guardianship under s. 880.33, if the department of health and family services, under rules established under ch. 55, finds the corporation a suitable agency to perform such duties.

History: 1973 c. 284; 1975 c. 393; 1981 c. 379; 1993 s. 27 s. 9126 (19).

880.36 Standby guardianship. (1) A petition for the appointment of a standby guardian of the person or property or both of a minor or person found incompetent under s. 880.08 to assume the duty and authority of guardianship on the death, incapacity or resignation of the initially appointed guardian may be

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brought under this chapter at any time. A petition for the appointment of a standby guardian of the person or property or both of a minor to assume the duty and authority of guardianship on the incapacity, death, or debilitation and consent, of the minor's parent shall be brought under s. 48.978.

(2) At any hearing conducted under this section the court may designate one or more standby guardians of the person or property whose appointment shall become effective immediately upon the death, incapacity, or resignation of the initially appointed guardian. The powers and duties of the standby guardian shall be the same as those of the initially appointed guardian. The standby guardian shall receive a copy of the court order establishing or modifying the initial guardianship, and the order designating the standby guardian. Upon assuming office, the standby guardian shall so notify the court.

History: 1973 c. 284; 1993 a. 486; 1997 a. 334.

880.37 Application for limited guardianship of property.

(1) An incompetent person who is 18 years of age or older, a guardian or any person authorized to petition for guardianship of a person may apply to a court for a limited guardianship of property. Consonant with the least restrictive limitation of rights, when the person demonstrates to the satisfaction of the court that the person is capable of managing in whole or in part the person's wages, earnings, income or assets, the court may appoint a limited guardian of such person's property, or in the event one person is appointed or serving as both guardian of the person and of the property of such person, a guardian of the person with limited powers as guardian of the property. A limited guardianship shall be used until the person has established himself or herself as reasonably capable of managing personal affairs without supervision.

(2) A limited guardian of the property shall receive, manage, disburse and account for all property, both real and personal, of the person not resulting from wages or earnings.

(3) Unless otherwise specified by the court, the person of 18 years of age or over for whom a limited guardian of the property has been appointed shall have the right to:

(a) Receive and expend any and all wages or other earnings from the person's employment; and

(b) Contract and legally bind himself or herself for any sum of money not exceeding \$300 or one month's wages or earnings, whichever is greater.

(4) Notwithstanding sub. (3), the court may place such other limitations upon the rights of a person subject to limited guardianship of property under this section as it determines are in the best interests of the person.

(5) The appointment of a limited guardian of property shall have no bearing on any of the rights specified in s. 880.33 (3) except upon specific finding of the court based upon clear and convincing evidence of the need for such limitations. In no event shall the appointment of a limited guardian constitute evidence of or a presumption as to the incompetence of the ward in any area not mentioned in the court order.

History: 1973 c. 284; 1975 c. 393, 421; 1993 a. 486.

880.38 Guardian of the person of incompetent. (1) A guardian of the person of an incompetent, upon order of the court, may have custody of the person, may receive all notices on behalf of the person and may act in all proceedings as an advocate of the person, but may not have the power to bind the ward or the ward's property, or to represent the ward in any legal proceedings pertaining to the property, unless the guardian of the person is also the guardian of the property. A guardian of the person of an incompetent or a temporary guardian of the person of an incompetent may not make a permanent protective placement of the ward unless ordered by a court under s. 55.06 but may admit a ward to certain residential facilities under s. 55.05 (5) or make an emergency protective placement under s. 55.06 (11). The guardian of the person

has the power to apply for placement under s. 55.06 and for commitment under s. 51.20 or 51.45 (13).

(2) A guardian of the person shall endeavor to secure necessary care, services or appropriate protective placement on behalf of the ward.

(3) A guardian of the person of an incompetent appointed under s. 880.33 shall make an annual report on the condition of the ward to the court that ordered the guardianship and to the county department designated under s. 55.02. That county department shall develop reporting requirements for the guardian of the person. The report shall include, but not be limited to, the location of the ward, the health condition of the ward, any recommendations regarding the ward and a statement of whether or not the ward is living in the least restrictive environment consistent with the needs of the ward. The guardian may fulfill the requirement under this subsection by submitting the report required under s. 55.06 (10).

History: 1973 c. 284; 1975 c. 393, 421; 1975 c. 430 s. 80; 1981 c. 379; 1983 a. 36; 1985 a. 176.

There must be an annual review of each protective placement by a judicial officer. The requirements of ss. 51.15 and 51.20 must be afforded to protectively placed individuals facing involuntary commitment under s. 55.06 (9) (d) and (c). State ex rel. Watts v. Combined Community Services, 122 Wis. 2d 65, 362 N.W.2d 104 (1985).

The guardian of an incompetent in a persistent vegetative state may consent to the withdrawal or withholding of life-sustaining medical treatment without prior court approval if the guardian determines that the withdrawal or withholding is in the ward's best interests. In Matter of Guardianship of L.W. 167 Wis. 2d 53, 482 N.W.2d 60 (1992).

The guardian of a person who became incompetent after voluntarily entering a nursing home with 16 or more beds may not consent to the person's continued residence in the home. Upon the appointment of a guardian, the court must hold a protective placement hearing. Guardianship of Agnes T. 189 Wis. 2d 520, 525 N.W.2d 266 (1995).

The holding in *Guardianship of L.W.* does not extend to persons who are not in a persistent vegetative state. However, if the guardian of the person not in a persistent vegetative state demonstrates by a clear statement of the ward made while competent that withdrawal of medical treatment is desired, it is in the patient's best interest to honor those wishes. *Spahn v. Eiseberg*, 210 Wis. 2d 558, 563 N.W.2d 485 (1997).

Guardianships and Protective Placements in Wisconsin After Agnes T. Fennell. Wis. Law. May 1995.

880.39 Guardianship of person; exemption from civil liability. Any guardian of the person is immune from civil liability for his or her acts or omissions in performing the duties of the guardianship if he or she performs the duties in good faith, in the best interests of the ward and with the degree of diligence and prudence that an ordinarily prudent person exercises in his or her own affairs.

History: 1987 a. 366.

SUBCHAPTER II**UNIFORM VETERANS' GUARDIANSHIP ACT**

880.60 United States uniform veterans' guardianship act. (1) **DEFINITIONS.** As used in this section:

(a) "Administrator" means the administrator of veterans' affairs of the United States or the administrator's successor.

(b) "Benefits" means all moneys paid or payable by the United States through the U.S. department of veterans affairs.

(c) "Estate" means income on hand and assets acquired partially or wholly with "income."

(d) "Guardian" means any fiduciary for the person or estate of a ward.

(e) "Income" means moneys received from the U.S. department of veterans affairs and revenue or profit from any property wholly or partially acquired therewith.

(f) "U.S. department of veterans affairs" means the U.S. department of veterans affairs, its predecessors or successors.

(g) "Ward" means a beneficiary of the U.S. department of veterans affairs.

(2) **ADMINISTRATOR AS PARTY IN INTEREST.** (a) The administrator shall be a party in interest in any proceeding for the appointment or removal of a guardian or for the removal of the disability

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CHAPTER 880

SUBCHAPTER I

GENERAL PROVISIONS

880.001 Declaration of policy. [ADD: CLARIFY THE PURPOSES OF THIS SUBCHAPTER (GUARDIANSHIPS) AS DISTINCT FROM THE PURPOSES OF SUBCHAPTER II (PROTECTIVE SERVICE SYSTEM.)]

880.01 Definitions. For the purpose of this chapter, unless the context otherwise requires:

(1) "Agency" means any public or private board, corporation or association which is concerned with the specific needs and problems of mentally retarded, developmentally disabled, mentally ill, alcoholic, drug dependent and aging persons, including a county department under s. 51.42 or 51.437.

(1k) "Activities of Daily Living" means activities relating to the performance of self care, work and leisure or play activities, including dressing, feeding or eating, grooming, mobility and object manipulation.

(1m) "Conservator" means a person appointed or qualified by a court at an individual's request pursuant to s. _____ to manage the estate of the individual.

NOTE: There is no definition of "conservator" currently in the statutes. This definition should reflect the meaning of the term as used in sec. 880.31.

(2) "Developmentally disabled person" means any individual having a disability attributable to mental retardation, cerebral palsy, epilepsy, autism or another neurological condition closely related to mental retardation or requiring treatment similar to that required for mentally retarded individuals, which has continued or can be expected to continue indefinitely, substantially impairs the individual from adequately providing for his or her own care or custody and constitutes a substantial handicap to the afflicted individual. **[The term does not include a person affected by dementia which is primarily caused by the process of aging or the infirmities of aging.]** Delete?

NOTE: This definition might not be necessary with an appropriate functional definition of incapacity.

(3) "Guardian" means a person who is eighteen years of age or older, a corporation or a public agency, including a local department of social services, appointed by a court to act on behalf of a

minor or an incompetent in providing for personal needs, or manage the estate of a minor, an incompetent or a spendthrift. [Should we add for profit corps. or law firms?]

NOTE: The additions to this definition come from the NY statute 81.03(a). This includes some detail, for example that the guardian must be eighteen or over, missing in the Wisconsin statute.

(4) "Incompetent" means a person adjudged by a court of record to be unable to meet the essential requirements for the person's health or safety

- (a) due to his or her inability to receive and evaluate information effectively or to communicate decisions, and
- (b) for reasons including, but not limited to, mental deficiency, physical illness or disability, chronic use of drugs or controlled substances or chronic intoxication.

"Meeting the essential requirements for physical health and safety" means those actions necessary to provide the health care, food, shelter, clothing, personal hygiene and other care without which serious physical injury or illness is likely to occur. Mere old age, eccentricity, poor judgment or physical disability, either singly or together, without mental impairment, shall not be used to establish incompetence. Except where otherwise indicated, the term "incompetent" in this chapter includes "financial incompetent."

NOTE: The committee wanted a simple but FUNCTIONAL definition of this term, incorporating an exception in the situation where the person may either harm him- or herself or is eccentric, similar to the exception to a finding of "incapacity" found in sec. 155.05(2).

(5) "Interested person" means

- (a) for purposes of the petition for guardianship or protective placement:
 - 1. The proposed ward, if he or she has attained 14 years of age.
 - 2. The spouse, and adult children of the proposed ward, and the parents of a minor proposed ward.
 - 3. If the proposed ward does not have a spouse, parent or adult child, the person or persons most closely related to the proposed ward.
 - 4. Any person who has been nominated as fiduciary or appointed to act as fiduciary for the proposed ward by a court of any state, any trustee for a trust established by or for the proposed ward, and any person appointed an agent or attorney in fact under a power of attorney for health care or financial power of attorney.
 - 5. If the proposed ward is a minor, the person who has exercised principal responsibility for the care and custody of the proposed ward during the 60-day

period before the filing of the petition.

6. If the proposed ward is a minor and has no living parents, any person nominated to act as fiduciary for the minor in a will or other written instrument prepared by a parent of the minor.

7. If the proposed ward is receiving moneys paid or payable by the United States through the Department of Veterans' Affairs or by the State of Wisconsin, a representative of the United States Department of Veterans' Affairs.

8. If the proposed ward is receiving medical assistance, community options program or similar benefits, the county department of human or social services.

9. Any other person that the court requires.

(b) for purposes of proceedings subsequent to the petition for guardianship or protective placement:

1. The guardian.

2. The spouse, and adult children of the ward, and the parents of a minor ward.

3. Such other persons as the court may require, including any fiduciary that the court may designate.

(c) The court may specifically waive notice to any person named above.

NOTE: The committee wanted a more complete listing of "interested person" than that found in current sec. 880.01(6), since some attorneys, to be complete, regularly notify any relatives who seem to be involved.

(6) "Minor" means a person who has not attained the age of 18 years.

(6m) "Not competent to refuse psychotropic medication" means that, because of chronic mental illness, as defined in s. 51.01 (3g), and after the advantages and disadvantages of and alternatives to accepting the particular psychotropic medication have been explained to an individual, one of the following is true:

(a) The individual is incapable of expressing an understanding of the advantages and disadvantages of accepting treatment, and the alternatives.

(b) The individual is substantially incapable of applying an understanding of the advantages, disadvantages and alternatives to his or her chronic mental illness in order to make an informed choice as to whether to accept or refuse psychotropic medication.

(7) "Standby guardian" means any person designated by the court under s. ____ whose appointment as guardian shall become effective immediately upon the death, incapacity, or resignation of the initially appointed guardian, or when the initially appointed guardian is unable or unavailable to fulfill his or her duties..

NOTE: With the addition of a section detailing the duties of a "standby guardian," it

would be helpful to have a definition of that term.

(8) "Ward" means a person for whom a guardian has been appointed

SUBCHAPTER II

STANDARD FOR APPOINTMENT OF A GUARDIAN

A. IN GENERAL

[THE FOLLOWING IS TAKEN FROM NY STATUTE 81.02, WITH MODIFICATIONS]

(1) The court may appoint a guardian for a proposed ward if the court determines any of the following:

(a) That the person is a minor as defined in sub. ____.

(b) That the person is incompetent as defined in sub. (2)., and:

1. That the appointment is necessary to provide for the personal needs of that person, including food, clothing, shelter, health care or safety and/or to manage the property and financial affairs of that person.

2. In deciding whether the appointment is necessary, the court shall consider the report of the guardian ad litem, as required in sec. ____, and the sufficiency and reliability of available resources, as defined in sub. ____, to provide for personal needs or property management without the appointment of a guardian. Any guardian appointed under this article shall be granted only those powers which are necessary to provide for personal needs and/or property management of the proposed ward in such a manner as appropriate to the individual and which shall constitute the least restrictive form of intervention, as defined in sub. ____.

(2) The determination of incompetence shall be based on clear and convincing evidence and shall consist of a determination that a person is likely to suffer harm because:

(a) The person is unable to provide for personal needs and/or property management.

(b) The person cannot adequately understand and appreciate the nature and consequences of such inability.

(c) Mere old age, eccentricity, poor judgment or physical disability, either singly or together, without both (a) and (b) above, shall not alone be used to establish

incompetence.

NOTE: The exception in (c) is found in the finding of "incapacity" for purposes of sec. 155.05(2).

(3) In reaching its determination of incompetence, the court shall give primary consideration to the functional level and functional limitations of the person. Such consideration shall include an assessment of that person's:

- (a) Management of the activities of daily living, **as defined in sub. ____.**
- (b) Understanding and appreciation of the nature and consequences of any inability to manage the activities of daily living.
- (c) Preferences, wishes, and values with regard to managing the activities of daily living.
- (d) The nature and extent of the person's property and financial affairs and his or her ability to manage them.

It shall also include an assessment of (i) the extent of the demands placed on the person by that person's personal needs and by the nature and extent of that person's property and financial affairs; (ii) any physical illness and the prognosis of such illness; (iii) any mental disability, as that term is defined in sec. ____, alcoholism or substance dependence as those terms are defined in sec., and the prognosis of such disability, alcoholism or substance dependence; and (iv) any medications with which the person is being treated and their effect on the person's behavior, cognition and judgment.

(4) In addition, the court shall consider all other relevant facts and circumstances regarding the person's:

- (a) Functional level.
- (b) Understanding and appreciation of the nature and consequences of his or her functional limitations.

[END OF NY STATUTE]

(5) Separate guardians of the person and of the estate may be appointed

NOTE: (5) is taken from current 880.03 last sentence.

NOTE: 880.05 (Venue) seems to take care of the jurisdictional issues of guardianship, so

880.03 is redundant. The committee recommended repealing the "extraordinary circumstances" phrase anyway, and simply allowing physical presence in a county to be the controlling factor for guardianship of a nonresident, as is true in 880.05. Therefore 880.03 is deleted.

B. EXCEPTIONS

880.04 Exceptions. (1) EMANCIPATION OF MARRIED MINORS. Except for minors found to be incompetent, upon marriage, a minor shall no longer be a proper subject for guardianship of the person and a guardianship of the person is revoked by the marriage of a minor ward. Upon application, the court may release in whole or in part the estate of a minor ward to the ward upon the ward's marriage. Upon marriage, the guardianship of an incompetent is subject to review under s. 880.34.

[Note: Should this be moved to Ch. 48? Also, is releasing the estate to the minor ward upon marriage a good idea?]

(2) SMALL ESTATES. If a minor or an incompetent, except for his or her incapacity, is entitled to possession of personal property of a value of \$10,000 or less, any court wherein an action or proceeding involving said property is pending may, in its discretion, appoint a guardian of the estate subject to such conditions as the court may require, or, without requiring the appointment of a guardian, order one of the following:

(a) Deposit in a savings account in a bank, the payment of whose accounts in cash immediately upon default of the bank are insured by the federal deposit insurance corporation; deposit in a savings account in a savings bank or a savings and loan association that has its deposits insured by the federal deposit insurance corporation; deposit in a savings account in a credit union having its deposits guaranteed by the Wisconsin credit union savings insurance corporation or by the national board, as defined in s. 186.01 (3m); or invest in interest-bearing obligations of the United States. The fee for the clerk's services in depositing and disbursing the funds under this paragraph is prescribed in s. 814.61 (12) (a).

(b) Payment to the natural guardian of the minor (as defined in sub. ____) or to the person having actual custody of the minor.

(c) Payment to the minor.

(d) Payment to the person having actual or legal custody of the incompetent or to the person providing for the incompetent's care and maintenance for the benefit of the incompetent.

(2m) INFORMAL ADMINISTRATION. If a minor or an incompetent, except for his or her

incapacity, is entitled to possession of personal property of a value of \$10,000 or less from an estate administered through informal administration under ch. 865, the personal representative may, without the appointment of a guardian, do any of the following:

- (a) With the approval of the register in probate, take one of the actions under sub. (2)(a).
- (b) With the approval of the guardian ad litem of the minor or incompetent, take one of the actions under sub. (2) (a) and file proof of the action taken and of the approval of the guardian ad litem with the probate registrar instead of filing a receipt under s. 865.21.

(3) **UNIFORM GIFTS AND TRANSFERS TO MINORS.** If a minor, except for his or her incapacity, is entitled to possession of personal property of any value, any court wherein an action or proceeding involving the property is pending may, without requiring the appointment of a guardian, order payment to a custodian for the minor designated by the court under ss. 880.61 to 880.72 or under the uniform gifts to minors act or uniform transfers to minors act of any other state.

SUBCHAPTER III

GUARDIANS OF THE PERSON AND OF THE ESTATE

A. WHO CAN BE A GUARDIAN

880.09 Nomination; selection of guardians. The court shall consider nominations made by any interested person and, in its discretion, shall appoint a proper guardian, having due regard for the following:

(1) **NOMINATION BY MINOR.** A minor over 14 years may in writing in circuit court nominate his or her own guardian, but if the minor is in the armed service, is without the state, or if other good reason exists, the court may dispense with the right of nomination.

(2) **PREFERENCE.** If one or both of the parents of a minor, a developmentally disabled person or a person with other like incapacity are suitable and willing, the court shall appoint one or both of them as guardian unless the proposed ward objects. The court shall appoint a corporate guardian under s. 880.35 only if no suitable individual guardian is available.

(3) **EFFECT OF NOMINATION BY MINOR.** If neither parent is suitable and willing, the court may appoint the nominee of a minor.

(4) **TESTAMENTARY GUARDIANSHIP OF CERTAIN PERSONS.** Subject to the rights of a surviving parent, a parent may by will nominate a guardian and successor guardian of the person or estate of any of his or her minor children who are in need of guardianship. For a person over the age of 18 found to be in need of guardianship by reason of a developmental disability or other like incapacity, a parent may by will nominate a testamentary guardian. The parent may waive the requirement of bond as to such estate derived through the will.

(5) **POWERS OF ATTORNEY.** If the proposed ward has executed a power of attorney for health care, or a financial power of attorney, the court shall follow the procedures under s. ____
(Determination and order appointing guardian)

NOTE: The committee strongly recommended including a person's own choice of agent as a possible guardian.

(6) **ANTICIPATORY NOMINATION; PREFERENCE.** Any person other than a minor may, at such time as the person has sufficient capacity to form an intelligent preference, execute a written instrument, in the same manner as the execution of a will under s. 853.03, nominating a person to be appointed as guardian of his or her person or property or both in the event that a guardian is in the future appointed. Such nominee shall be appointed as guardian by the court unless the court finds that the appointment of such nominee is not in the best interests of the person for whom, or for whose property, the guardian is to be appointed.

NOTE: A cross reference or restatement should be added here to sec. 243.07(3)(b) - anticipatory nomination in a durable power of attorney. Also, make sure that there is the appropriate cross reference to new probate code (and consider any changes made to formalities for will in connection with this section).

(7) [**From 880.35**] **PRIVATE NONPROFIT CORPORATION.** A private nonprofit corporation organized under ch. 181, 187 or 188 is qualified to act as guardian of the person or of the estate or both, of an individual found to be in need of guardianship under s. 880.33, if the department of health and social services, under rules established under ch. 55, finds the corporation a suitable agency to perform such duties.

NOTE: What about for profit corporations or law firms (whether or not incorporated?)

(8) **OTHER CRITERIA FOR GUARDIAN SELECTION.**

(a) The proposed guardian must submit a sworn and notarized statement to the court at least 96 hours before the hearing, stating that the guardian has not been convicted of a crime as **defined in sub ____**, filed for or received protection under the bankruptcy laws or has had a license revoked or canceled that was required by the laws of any state for the practice of a profession or occupation.

(b) If the proposed guardian has been convicted of a crime, filed for or received protection under the bankruptcy laws or has had a license revoked or canceled that was required by the laws of any state for the practice of a profession or occupation, then the statement must contain a description of the circumstances surrounding those events.

(c) If the court finds that the guardian is inappropriate, the court shall set a hearing date to be held in less than 30 days, requesting petitions to propose a suitable guardian. The guardian ad litem shall investigate the suitability of the new proposed guardian.

NOTE: The committee recognizes that not all guardians are fit to serve, especially

guardians of the property. This proposed provision attempts to give notice of a possible inappropriate guardian.

(9) [From :880.33(5)] In appointing a guardian, the court shall take into consideration the opinions of the alleged incompetent and of the members of the family as to what is in the best interests of the proposed incompetent. However, the best interests of the proposed incompetent shall control in making the determination when the opinions of the family conflict with the best interests of the ward. The court shall also consider potential conflicts of interest resulting from the prospective guardian's employment or other potential conflicts of interest. If the proposed incompetent has executed a power of attorney for health care under ch. 155, the court shall give consideration to the appointment of the health care agent for the individual as the individual's guardian. If the proposed incompetent has executed a durable financial power of attorney under Ch. 243, the court shall give consideration to the appointment of the agent for the individual as the individual's guardian of the estate.

NOTE: The committee feels strongly that a person's own choice of agent is a good place to start in searching for an appropriate guardian.

(10) [Note: From 880.33(5m)] No person, except a nonprofit corporation approved by the department of health and social services under s. [880.35??], who has guardianship of the person of 5 [??] or more adult wards unrelated to the person may accept appointment as guardian of the person of another adult ward unrelated to the person, unless approved by the department. [No such person may accept appointment as guardian of more than 10 such wards unrelated to the person. **Should this be changed? Should there be regulation or licensing or a training requirement?]]**

NOTE: Make a cross reference here to 880.295, which details procedures for appointing a guardian or conservator for certain individuals.

B. DUTIES AND POWERS OF THE GUARDIAN

1. IN GENERAL

[ALL OF THE FOLLOWING COMES FROM NEW YORK STATUTE SEC. 81.20, WITH ADDITIONS]

Duties of guardian generally

- (a) A guardian shall exercise only those powers that the guardian is authorized to exercise by court order. All other rights are reserved to the ward.
- (b) A guardian shall exercise the utmost care and diligence[**good faith?**]
when acting on behalf of the incapacitated person.
- (c) A guardian shall act in all proceedings as an advocate of the ward, and if the ward is

protectively placed, advocate especially in regards to the ward's rights as stated in sec. 51.61, Stats.

(d) A guardian shall exhibit the utmost degree of trust, loyalty and fidelity in relation to the incapacitated person.

2. DUTIES AND POWERS OF THE GUARDIAN OF THE ESTATE

1. [**Note: From 880.19(1) and New York Statute combined**] Duties of the guardian of the Estate. The guardian of the estate shall afford the incapacitated person the greatest amount of independence and self-determination with respect to property management in light of that person's functional level, understanding and appreciation of his or her functional limitations, and personal wishes, preference and desires with regard to managing the activities of daily living. To this end, to the extent provided in the Determination and Order Appointing Guardian, the guardian of the estate shall:

(a). Take possession of all of the ward's real and personal property, and of rents, income, issues and benefits therefrom, whether accruing before or after the guardian's appointment, and of the proceeds arising from the sale, mortgage, lease or exchange thereof. Subject to such possession the title of all such estate and to the increment and proceeds thereof shall be in the ward and not in the guardian.

(b). Retain, expend or distribute, sell and invest such property, as hereinafter provided, and account for it faithfully.

(c). Determine whether the incapacitated person has executed a will, determine the location of any will, and the appropriate persons to be notified in the event of the death of the incapacitated person and, in the event of the death of the incapacitated person, notify those persons.

(d). Use the property and financial resources and income available therefrom to maintain and support the incapacitated person, and to maintain and support those persons legally dependent upon the incapacitated person. **[Add language about college expenses?]**

(e). At the termination of the appointment, deliver such property to the person legally entitled to it.

(f). File with the recording officer of the county wherein the incapacitated person is possessed of real property, an acknowledged statement to be recorded and indexed under the name of the incapacitated person identifying the real property possessed by the incapacitated person, and the tax map numbers of the property, and stating the date of adjudication of incapacity of the person regarding property management, and the name, address, and telephone number of the guardian and the guardian's surety.

(g). Perform all other duties required by law.

(h) [Note: From 880.39] Exemption from civil liability. Any guardian of the person or of the estate is immune from civil liability for his or her acts or omissions in performing the duties of the guardianship if he or she performs the duties in good faith, in the best interests of the ward and with the degree of diligence and prudence that an ordinarily prudent person exercises in his or her own affairs.

NOTE: The committee believes all guardians should be immune under the circumstances stated.

NOTE: The committee believes full guardianships of the person ("blanket" guardianships) are overused, and believes that adopting some variation of New York's law, which emphasizes limited guardianships, may accomplish that goal.

Advocates have been calling for limited guardianships for more than a decade. A key reason that the National Commissioners on Uniform State Laws adopted the Uniform Guardianship and Protective Proceedings Act in 1982 was to include the concept of limited guardianships. Every state that has implemented major guardianship reform in the past few years has incorporated provisions for limited orders, or mandated limited orders enumerating the specific powers given the guardian, which are only those that the ward is incapable of exercising.

2. Powers of the Guardian of the Estate. Consistent with the functional limitations of the ward, that person's understanding and appreciation of the harm that he or she is likely to suffer as the result of the inability to manage property and financial affairs, and that person's personal wishes, preferences and desires with regard to managing the activities of daily living, and the least restrictive form of intervention, the court may authorize the guardian to exercise those powers necessary and sufficient to manage the property and financial affairs of the ward; to provide for the maintenance and support of the ward, and those persons depending upon the ward; to transfer a part of the ward's assets to or for the benefit of another person on the ground that the ward would have made the transfer if he or she had the capacity to act. Transfers made pursuant to this section may be in any form that the ward could have employed if he or she had the requisite capacity, except in the form of a will or codicil. *Except as to the powers enumerated in subs. _____ below, all such powers may be exercised by the guardian without approval of the court.*

(a) Those powers which may be exercised by the guardian only with court approval are:

- (1) Make gifts.
- (2) Transfer assets of the ward to the trustee or trustees of an existing revocable

living trust created by the ward for the benefit of himself or herself and those dependent upon the ward for support. *or to the trustee or trustees of a trust created for the exclusive benefit of the ward, if a minor, which distributes to him or her at age 18 or 21, or to his or her estate, or as he or she appoints if he or she dies prior to age 18 or 21.*

NOTE: (2) is current 880.175, rephrased.

(3) Establish a trust under 42 USC 1396p(d)(4) (OBRA '93 Supplemental Needs Trusts) and transfer assets into the trust.

Note: For persons not under guardianship, such trusts may also be created by a parent, the spouse, any issue or next of kin of a ward.

(4) Purchase an annuity contract and exercise rights to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value.

(5) Exercise any elective rights accruing to the ward by reason of the death of the ward's spouse or parents.

(6) Release or disclaim any interest by testate or intestate succession or by inter vivos transfer as provided in Secs. ____, Wis. Stats.

(7) Enter into marital property agreement with the ward's spouse pursuant to Sec. 766.58, Stats.

(b) The following powers may be exercised by the guardian without court approval:

(1) Provide support for persons dependent upon the ward for support, whether or not the ward is legally obligated to provide that support, except that if the ward is not obligated to provide support, court approval under sub. ____ shall be required.

(2) Convey or release contingent and expectant interest in property, including marital property rights and any right of survivorship incidental to joint tenancy or survivorship marital property.

(3) Enter into contracts.

(4) Exercise options of the ward to purchase securities or other property.

(5) Authorize access to or release of confidential records.

(6) Apply for government and private benefits.

(7) Catch all

(2) If the petitioner or the guardian seeks the authority to exercise a power which involves the transfer of a part of the ward's assets to or for the benefit of another person, including the petitioner or guardian, the petitions shall include the following information:

(a) Whether any prior proceeding has at any time been commenced by any person seeking such power with respect to the property of the ward and, if so, a description of the nature of such application and the disposition made of such application.

(b) The amount and nature of the financial obligations of the ward including funds presently and prospectively required to provide for the ward's own maintenance, support, and well-being and to provide for other persons dependent upon the ward for support, whether or not the ward is legally obligated to provide that support. A copy of any court order or written agreement setting forth support obligations of the ward shall be attached to the petition if available to the petitioner or guardian.

(c) The property of the ward that is the subject of the present application.

(d) The proposed disposition of such property and the reasons why such disposition should be made.

(e) Whether the ward has sufficient capacity to make the proposed disposition. If the ward has such capacity, his or her written consent shall be attached to the petition.

(f) Whether the ward has previously executed a will or similar instrument and if so, the terms of the most recently executed will or similar instrument together with a statement as to how the terms of the will or similar instrument became known to the petitioner or guardian. For purposes of this article, the term "will" shall include a revocable or irrevocable trust.

1. If the petitioner or guardian can, with reasonable diligence, obtain a copy of the most recently executed will or similar instrument, the petitioner or guardian shall deliver it to the Court, with appropriate safeguards for confidentiality. In such case, the petition shall contain a statement as to how the copy was secured and the basis for the petitioner or guardian's belief that such copy is a copy of the ward's most recently executed will or similar instrument.

2. If the petitioner or guardian is unable to obtain a copy of the most recently executed will or similar instrument, or if the petitioner or guardian is unable to

determine whether the ward has previously executed a will or similar instrument, what efforts were made by the petitioner or guardian to ascertain such information.

3. If a copy of the most recently executed will or similar instrument is not otherwise available, the court may direct an attorney or other person who has the original will or similar instrument in his or her possession to turn a photocopy over to the court for its examination, in camera. A photocopy of the will or similar instruments may, in the discretion of the court, be turned over by the court to the parties in such proceeding unless the court finds that to do so would be contrary to the best interests of the ward.

(g) A description of any significant gifts or patterns of gifts made by the ward.

(h) The names, post-office addresses and relationships of the presumptive distributees of the ward as that term is defined in sub. ___ and of the beneficiaries under the most recent will or similar instrument executed by the ward.

(3) Notice of a petition seeking relief under this section shall be served upon:

(a) The persons entitled to notice under sub. ____.

(b) If known to the petitioner or guardian, the presumptive distributees of the ward as that term is defined in sub. ____, unless the court dispenses with such notice.

(c) If known to the petitioner or guardian, any person designated in the most recent will or similar instrument of the ward as beneficiary whose rights or interests would be adversely affected by the relief requested in the petition unless the court dispenses with such notice.

(d) The County Corporation Counsel in the discretion of the court.

(4) In determining whether to approve the application, the court shall consider:

(a) Whether the incapacitated person has sufficient capacity to make the proposed disposition himself or herself, and, if so, whether he or she has consented to the proposed disposition.

(b) whether the disability of the ward is likely to be of sufficiently short duration such that he or she should make the determination with respect to the proposed disposition when no longer disabled.

(c) Whether the needs of the ward and his or her spouse or other legally dependent

persons depending upon the ward for support can be met from the remainder of the assets of the ward after the transfer is made without causing the ward to need public assistance; provided however that nothing herein shall prohibit gifts by a ward that would be permitted under Sec.[MA exempt gift statute].

(d) Whether the donees or beneficiaries of the proposed disposition are the natural objects of the bounty of the ward and whether the proposed disposition is consistent with any known testamentary or other estate plan or pattern of lifetime gifts he or she has made.

(e) Whether the proposed disposition will produce estate, gift, income or other tax savings which will significantly benefit the ward or his or her dependents or other persons for whom the ward would be concerned.

(f) Such other factors as the court deems relevant.

(5) The court may grant the application if satisfied of the following and shall make a record of these findings:

(a) The ward lacks the requisite mental capacity to perform the act or acts for which approval has been sought and is not likely to regain such capacity within a reasonable period of time or, if the ward has the requisite capacity, that he or she consents to the proposed disposition.

(b) A competent, reasonable individual in the position of the ward would be likely to perform the act or acts under the same circumstances.

(c) The ward has not manifested an intention inconsistent with the performance of the acts or acts for which approval has been sought at some earlier time when he or she had the requisite capacity or, if such intention was manifested, the particular person would be likely to have changed such intention under the circumstances existing at the time of the filing of the petition.

(6) Nothing in this section imposes any duty on the guardian to commence a special proceeding pursuant to this section seeking to transfer a part of the assets of the ward to or for the benefit of another person and the guardian shall not be liable or accountable to any person for having failed to commence a special proceeding pursuant to this article seeking to transfer a part of the assets of the ward to or for the benefit of another person.

(7) [**Note: From 880.19(2)-(6) Management of ward's estate.**] RETENTION OF ASSETS.

(a) The guardian of the estate may, without the approval of the court, retain any real or personal property possessed by the ward at the time of appointment of the guardian or

subsequently acquired by the ward by gift or inheritance without regard to ch. 881, so long as such retention constitutes the exercise of the judgment and care under the circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

(b) The guardian of the estate may, with the approval of the court, after such notice as the court directs, retain any real or personal property possessed by the ward at the time of the appointment of the guardian or subsequently acquired by the ward by gift or inheritance for such period of time as shall be designated in the order of the court approving such retention, without regard to ch. 881.

(8) CONTINUATION OF BUSINESS. In all cases where the court deems it advantageous to continue the business of a ward, such business may be continued by the guardian of the estate on such terms and conditions as may be specified in the order of the court.

(9) INVESTMENTS.

(a) The guardian of the estate may, without approval of the court, invest and reinvest the proceeds of sale of any guardianship assets and any other moneys in the guardian's possession in accordance with ch. 881.

(b) The guardian of the estate may, with the approval of the court, after such notice as the court directs, invest the proceeds of sale of any guardianship assets and any other moneys in the guardian's possession in such real or personal property as the court determines to be in the best interests of the guardianship estate, without regard to ch. 881.

(c) No guardian shall lend guardianship funds to himself or herself.

(10) SALES AND OTHER DISPOSITIONS.

(a) The guardian of the estate may, without approval of the court, sell any property of the guardianship estate acquired by the guardian pursuant to sub. 9.

(b) The court, on the application of the guardian of the estate or of any other person interested in the estate of any ward, after such notice if any, as the court directs, may authorize or require the guardian to sell, mortgage, pledge, lease or exchange any property of the guardianship estate upon such terms as the court may order, for the purpose of paying the ward's debts, providing for the ward's care, maintenance and education and the care, maintenance and education of the ward's dependents, investing the proceeds or for any other purpose which is in the best interest of the ward.

(c) No guardian shall purchase property of the ward, except at fair market value and with the approval of the court.

(d) The provisions of this subsection insofar as they apply to real estate shall be subject to ch. 786.

(11) TRUST COMPANIES, EXEMPTION FROM INVESTMENT RESTRAINTS. The limitations of this section relating to retention, sale, investment or reinvestment of any asset shall not be applicable to any bank or trust company authorized to exercise trust powers.

880.195 Transfer of Menominees guardianship funds to trust. *The circuit court which has appointed a guardian of the estate of any minor or incompetent who is a member of the Menominee Indian tribe as defined in s. 49.385 or a lawful distributee thereof may direct the guardian to transfer the assets of the minor or incompetent in the guardian's possession to the trustees of the trust created by the secretary of interior or his or her delegate which receives property of the minors or incompetents transferred from the United States or any agency thereof as provided by P.L. 83-399, as amended, and the assets shall thereafter be held, administered and distributed in accordance with the terms and conditions of the trust.*

Note: Do we want to put this somewhere else

(12) FOR SUPPLEMENTING PARENT'S SUPPORT OF MINOR. *If any minor has property which is sufficient for his or her maintenance and education in a manner more expensive than his or her parents can reasonably afford, regard being had to the situation and circumstances of the family, the expenses of the minor's education and maintenance may be defrayed out of his or her property in whole or in part, as shall be judged reasonable and be directed by the circuit court; provided however that nothing herein shall relieve a parent of the duty of supporting his/her/their child.*

(12) [Note: From 880.22] Claims.

(a) PAYMENT. Every guardian of the estate shall pay the just debts of the ward out of the ward's personal estate and the income of the ward's real estate, if sufficient, and if not, then out of the ward's real estate upon selling the same as provided by law. But a temporary guardian shall pay the debts of his or her ward only on order of the court.

(b) PROCEEDINGS TO ADJUST CLAIMS. The guardian or a creditor of any ward may apply to the court for adjustment of claims against the ward incurred prior to entry of the order appointing the guardian or the filing of a lis pendens as provided in s. _____. The court shall by order fix the time and place it will adjust claims and the time within which all claims must be presented or be barred. Notice of the time and place so fixed and limited shall be given by publication as in estates of decedents; and all statutes relating to claims against and in favor of estates of decedents shall apply. As in the settlement of estates of deceased persons, after the court has made the order no action or

proceeding may be commenced or maintained in any court against the ward upon any claim of which the circuit court has jurisdiction.

(13) [**Note: From 880.23**] **Actions.** The guardian shall settle all accounts of the ward and may demand, sue for, collect and receive all debts and claims for damages due him or her, or may, with the approval of the circuit court, compound and discharge the same, and shall appear for and represent his or her ward in all actions and proceedings except where another person is appointed for that purpose.

2. DUTIES AND POWERS OF A GUARDIAN OF THE PERSON

[THE FOLLOWING COMES FROM NY STATUTE 81.22]

(1) Powers of Guardian of the Person. Consistent with the functional limitations of the ward, the ward's understanding and appreciation of the harm that he or she is likely to suffer as the result of the inability to provide for personal needs, and the ward's personal wishes, preferences and desires with regard to managing the activities of daily living as defined in sub. _____, and the least restrictive form of intervention, and subject to the limitations contained in the Determination and Order Appointing Guardian, the court may grant to the guardian powers necessary and sufficient to provide for the personal needs of the ward. Those powers which may be granted include, but are not limited to, the power to:

- (a) Make decisions about who shall provide personal care or assistance.
- (b) Make decisions regarding social environment and other social aspects of the life of the ward including but not limited to decisions regarding marriage.

Note: can this even be in here? Fundamental right to marriage?]

- (c) Make decisions regarding the ward's travel restrictions.
- (d) Make decisions relating to the ward's right to obtain or retain licenses for which the ward is deemed qualified.
- (e) Authorize access to or release of confidential records.
- (f) Make decisions regarding education.
- (g) Apply for government and private benefits.

(h) **[Decisions on consenting to or refusing medical treatment including tube feeding. Address issues raised by L.W. and Edna M.F. Have Betsy Abramson try her hand at drafting this section]**

(i) Choose the ward's place of residence. In making this decision, the guardian may consider the existence of and availability of family, friends and social services in the community; the care, comfort and maintenance, and where appropriate, rehabilitation of the ward; and the needs of those with whom the ward resides. A guardian may admit a ward to skilled nursing facilities and certain community based residential facilities as provided by **[delineate sections]**

(2) Duties of the guardian of the Person.

(a) A guardian shall make an annual report on the condition of the ward to the court that ordered the guardianship and to the county department designated under s. 55.02. That county department shall develop reporting requirements for the guardian of the person. The report shall include, but not be limited to, the location of the ward, the health condition of the ward, any recommendations regarding the ward and a statement of whether or not the ward is living in the least restrictive environment consistent with the needs of the ward.

NOTE: (e) is current 880.38(3), but omitting the last sentence, which the committee wanted deleted. It may be that since guardians have been allowed to submit the sec. 55.06(10) report in the past, it be a good idea to state that that report is no longer acceptable.
[END OF NY STATUTE]

(b) A guardian of the person shall secure necessary care or services for the ward, in the ward's best interests, based on the following:

1. Regular physical inspection of the ward's condition, surroundings and treatment;
2. Examination of medical and treatment records;
3. Attendance at and participation in staffings where treatment and care are discussed; and
4. Inquiry into risks, benefits and alternatives, particularly where drastic or restrictive treatments are proposed;

(c) A guardian of the person may bind the ward or the ward's property, or represent the ward in any legal proceedings pertaining to the property, **[need to define the scope of the authority to bind the assets of the ward to pay for care etc.]**

NOTE: (2) comes from 880.38(1).

880.33(4r) *If a person substantially fails to comply with the administration of psychotropic medication, if any, ordered under the approved treatment plan under sub. (4m), a court may authorize the person's guardian to consent to forcible administration of psychotropic medication to the person, if all of the following occur before the administration:*

(a) The corporation counsel of the county or the person's guardian files with the court a joint statement by the guardian and the director or the designee of the director of the treatment facility that is serving the person or a designated staff member of the appropriate county department under s. 46.23, 51.42 or 51.437, stating that the person has substantially failed to comply. The statement shall be sworn to be true and may be based on the information and beliefs of the individuals filing the statement.

(b) Upon receipt of the joint statement of noncompliance, if the court finds by clear and convincing evidence that the person has substantially failed to comply with the administration of psychotropic medication under the treatment plan, the court may do all of the following:

1. Authorize the person's guardian to consent to forcible administration by the treatment facility to the person, on an outpatient basis, of psychotropic medication ordered under the treatment plan.

2. If the guardian consents to forcible administration of psychotropic medication as specified in sub. 1., authorize the sheriff or other law enforcement agency, in the county in which the person is found or in which it is believed that the person may be present, to take charge of and transport the person, for outpatient treatment, to an appropriate treatment facility.

(c) If the court authorizes a sheriff or other law enforcement agency to take charge of and transport the person as specified in par. (b) 2., a staff member of the appropriate county department under s. 46.23, 51.42 or 51.437 or of the treatment facility shall, if feasible, accompany the sheriff or other law enforcement agency officer and shall attempt to convince the person to comply voluntarily with the administration of psychotropic medication under the treatment plan.

Note: This probably should be moved somewhere